Supreme Court, U.S.
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87-1780

NO. _____

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

WILLIAM R. BURT,

Petitioner,

vs.

THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO; HENRY F. McQUADE, Chief Justice; JOSEPH J. McFADDEN, CHARLES R. DONALDSON, ALLAN G. SHEPARD and ROBERT E. BAKES, in their official capacities; THE IDAHO STATE BAR, a professional association; GERALD W. OLSON, THOMAS A. MITCHELL, LOUIS H. COSHO, MACK A. REDFORD, DEAN E. MILLER, JOHN M. SHARP, JOHN H. BENGSTON, THOMAS G. NELSON and RONALD K. KULL, Commissioners, former Commissioners and Officers of the Idaho State Bar Association, individually and in their official capacities; and ROBERT E. RAYBORN, individually and as a member of the Idaho State Bar,

Respondents.

ON WRIT OF CERTIORARI FOR THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION

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QUESTIONS PRESENTED FOR REVIEW

1. Do the Idaho statutes create a guild, designated the Idaho State Bar, and purport to endow it with monopoly power over the practice of law in Idaho:

a) Does the Bar as organized constitute a "guild" or

b) Has the Bar functioned as a "guild"?

2. The power to create such a statewide guild monopoly operated for the members' unregulated profit has not been delegated to the State of Idaho by:

a) The people of the United States as would be required in view of its impact on the functioning of the Art III courts in relation to Idaho, and on activities requiring legal services affecting interstate commerce, nor by

b) The people of Idaho within the purview of Art I Sec. 21 of the Constitution

of the State of Idaho (A-25).

3. The Idaho State Bar utilizes its guild function of an exclusive right to investigate misconduct of its members (A-72) in a manner that precludes due process in civil litigation between lay litigants in the State and Federal courts in Idaho (A-68 and A-69), in violation of the Civil Rights Act.[1]

4. a) Did this Court in Hoover v. Ronwin 466 US 558 (1984), which was a Sherman Act Sec. 1 case, intend that case to be dispositive of the constitutional and Sec. 2 issues set forth in ¶ 1-2 supra? The Circuit Court opinion holds that Hoover is dispositive and controlling. (A-13)

5. a) Was it not error for the District Court to decline to consider Ronwin v State Board 686 F2d 692 (CA-9 en banc filed Sept. 8, 1982) and the same case as

[1] As interpreted by this Court in Kush v Rutledge 460 US 719, 724-256 (1983).

decided by a three judge panel on Dec. 14, 1981 and reported CCH Trade Cases 1981-2 ¶64,414 as controlling law (#280 p 6) on all issues stemming from the state action exemption in the proceedings herein. (Final judgment was not entered until Apr. 8, 1983 (#220, p 6).

b) Has not the Circuit Court in its opinion ignored the rule stated in Hasbrouck v Texaco 663 F2d 930, 933 (CA-9, 1981) that the District Court should have conformed its rulings and orders to Circuit Court decisions then controlling in its circuit.

6. By declining to consider Ronwin, supra, as controlling (#280 p 6) on the issue of "state action exemption", the District Court concluded there could be no conspiracy because "state action" was involved and erred by:

a) fragmenting and compartmentalizing Burt's antitrust claims so that Burt was never permitted to present to any jury "the

whole picture", and

b) discovery was circumscribed by Court protective orders in a manner which prevented discovery of evidence as to both the conspiracy to violate the antitrust laws, as well as the conspiracy to deprive Burt of rights protected by the U.S. Constitution (#92, p 6). There would be no "state action exemption" vis-a-vis the conspiracy to invade constitutional rights, but the District Court's rulings prevented differentiation as to the two conspiracies;

c) rejecting the applicability of the rule for applying the statute of limitation in antitrust actions as set forth in Zenith Radio v Hazeltine 401 US 321, 339-340(1971);

d) ruling incorrectly on the hearsay rule as to statements by conspirators (#280, p 15);

e) declining to consider that the running of the statute of limitations could

be tolled by concealment, or

f) that equitable considerations determine when the Complaint was in effect filed for purposes of determining application of the antitrust tolling statute, or

g) failing to award Burt attorneys fees under 15 USC Sec. 26 pursuant to Zenith Radio Corp v Hazeltine 395 US 100 131(1964), and Southwest Marine, Inc. v Campbell 732 F2d 744, 746-7 (CA-9, 1984) cert. den. 105 S.Ct. 564, or under 42 USC 1988,

h) permitting a "passing on defense" in the "48-acre" part of the antitrust cause of action

7. The Circuit Court has upheld the dismissal of the Fourth Cause of Action based on the Circuit Court's prior "Memorandum" opinion in these proceedings dated Oct. 10, 1980 (#78-2659) (A-24) relating to the Second Cause of Action. The Fourth Cause was added by motion (#87) dated July 23, 1981 to preserve constitutional

rights of action (discussed #104A) such as have been subsequently recognized by this Court in Kush v Rutledge, supra at 724-25 and, hence, the Ninth Circuit Memorandum Opinion dated Oct. 10, 1980 (focusing as it did merely on "admission" issues) cannot properly be controlling authority on the issue of the dismissal by the District Court of the Fourth Cause of Action on July 2, 1982 (#103).

8. A. It has been improper for the Circuit Court and the District Court to fail to permit Burt to file the Amended Complaint clarifying constitutional issues submitted on March 31, 1977 (with #44).[2]

One of the constitutional issues in #44 (The "Third Claim for Relief", p 8 of #44, challenging the Bar as a guild-monopoly) was recognized by the District Court in its

[2] (See p 42 et seq of "Substitute Brief" submitted to the Ninth Circuit in 78-2659 and filed with the District Court in #87 on July 23, 1981).

Summary Judgment Order of Mar. 11, 1983 (#200), based on Defendants' motion dated Mar. 10, 1983 (#199) without a supporting memorandum. The memoranda incorporated by reference (believed to be #165 and #166) were not part of the record on appeal before the Circuit Court (in 83-3878) and contain no discussion of the issues contained in ¶ 1-2 above. Yet the Circuit Court has confirmed the order.

B. The procedure followed by the District Court and condoned by the Circuit Court has precluded any presentation of the Turner v Fouche 396 US 346, 355-6(1971) (no blacks on juries) aspect by Burt herein. There is no record of any older (over 50 years of age) out-of-state lawyer being admitted to practice in Idaho via the admission examination route. That is the "Unconstitutional as Applied" cause set forth in the "Second Claim For Relief" in the proposed Amended Complaint (filed with

#44 on Mar. 31, 1977).

9. It was improper for the District Judge to preside over a case in which his own son had participated in preparing the challenged Aug. 1972 admission examination (#280 p 22), which would have placed his son near the core of the conspiracy to violate rights protected by the Civil Rights and Sherman Acts.

LIST OF PARTIES

All parties are named in the caption.

OPINIONS BELOW

The Memorandum of Opinion of the Court of Appeals and its Order Denying Rehearing are not to be published but appear in the Appendix hereto (A-2 and A-22) plus its earlier Opinion referred to therein (A-24 and A-28) along with the District Court's Judgment (A-29).

Petitioner has requested the Clerk of the Court of Appeals to file the Record on Appeal in this Court pursuant to Rule 19.1.

GROUNDS ON WHICH JURISDICTION OF SUPREME COURT IS INVOKED

Review is sought for the Court of Appeals "Memorandum" opinion, which was filed Dec. 2, 1987 and the Order Denying Rehearing, filed Feb. 23, 1988 (A-2 and 22) in this Court under the authority of 28 USC §1254, with additional relief sought under 28 USC §2106.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED (Texts in Appendix)-

United States Constitution

a. Art. IV, Clause 2 (Comity)

b. Art. VI, Clause 2 (Supremacy)

c. Tenth Amendment (Reserved Powers)

d. Fourteenth Amendment (Due Process)

United States Statutes

a. 15 USC § 1, 2 and 26

b. 28 USC § 455(b)(5) and (e)

c. 42 USC 1983, 1985, and 1988 (Civil Rights Act)

Constitution of Idaho

a. Article 1 Sec. 21

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PUBLISHER'S NOTE:

The following pages are unavailable for filming:

8,9

STATEMENT OF THE CASE

The Complaint was filed in this action on Jan. 30, 1976 in the Federal District Court in Idaho (Civ. 1-76-22) and during the course of the proceeding its jurisdiction was invoked under: 15 USC §§15 and 26, 28 USC §§1331, 1337, 1343, 2201 and 2202 and 42 USC §§1983, 1985 and 1988, and directly under the U.S. Constitution pursuant to Mt. Healthy School District 429 US 274, 278 (1974). It is an amplified version of a class action complaint based on violation of constitutional rights filed Oct. 27, 1972 in the same District Court (Burt v McQuade Civ. 1-72-147), challenging the results of a bar admission examination prepared and administered by the Idaho State Bar in Aug.1972. By letter dated Oct. 31, 1972 (#54, p 5) Burt requested counsel Higer to add violations of the Sherman Act to the causes of action. The Complaint filed in 1972 was on behalf of the 48 applicants (38 out of 86

passed) who were notified by the Idaho State Bar that their application to practice law within the State of Idaho was denied by the Board of Commissioners of the Idaho State Bar because of failure to pass the Idaho State Bar Examination. (The notice received by Petitioner was dated Sept. 25, 1972 and was signed "By Order of the Commissioners of the Idaho State Bar.") (A-122).

The suit was terminated after the Attorney General of Idaho, who represented the Supreme Court Justices in the Federal Civ. 1-72-147 action, advised counsel for the Plaintiff that their firm might be destroyed by his clients deciding appeals against their firm unless they terminated their action before the Justices filed their answer. (See A-74 Affidavit of Department of Justice investigator[3] which is Ex B to Complaint, #1) The suit was terminated by stipulation on Nov. 28, 1972 (A-118).

Petitioner reported the above "threat"

[3] Mr. LaFarge is also one of the signers of the Civil Investigative Demand (A-78).

emanating from the Attorney General of Idaho to the United States Department of Justice and also called the Department's attention to the existence of an Advisory Fee Schedule (A-105) provided by the Bar to its members. Not until the Idaho State Bar received notice from the Department of Justice on Apr. 4, 1973 that the Bar was being served a Civil Investigative Demand (A-77), covering the price fixing and the use of admission examinations for illegal economic objectives, did it withdraw the published schedule Apr. 5, 1973.

The District Court confined the trial to the First and Third Cause of Action as set forth in the Amended Complaint (#92).

First Cause of Action: Basically, a class action[4] on behalf of all persons 50 or older who wish to move their law practice from sister states to Idaho, based on scientific principles that have been demonstrated by federally-financed studies that

[4] Cir. Ct. Opinion errs on facts (A-3). No damages are sought against Idaho Justices. They are named in official capacity only (#91 p 50, L 21; also #177 p 4 L 20-21)

beginning at age 50, one's speed in matters such as written examinations declines, even though one's power or ability in the field such as law may increase. (A-80[5] which is Ex A to #1) The examination administered to Petitioner took three full days under strict time limitations and speed pressures and was graded on the same basis as those of students newly graduated from law school. Hence, the examination as administered by the Idaho State Bar precluded fair or rational results. There is no record of any older attorney having been admitted to the Idaho Bar via the examination process. Statistically 30 older lawyers should have been so admitted during the years 1970-76 alone (#97 p 16).

The facts stipulated for purposes of appeal (#280 which was Ex 3 to #283) provide inclusions by reference of pp 3-7 of #264 and pp 9-19 of the "Substitute Brief" filed as Ex A to #84.

[5] Also see Deposition of Dr. Steven P. Thurber

One fact is that no applicants were (p 3 of #264) permitted by the Bar to pass the Apr. 1969 admission examination, and no ameliorative action was initiated by the Supreme Court of Idaho to review said results. "A 'monopoly' involves the power to exclude competition when the monopolist desires to do so" U.S. v duPont 353 US 586, 592 (1957).

The specific deficiencies of the August 1972 examination are set forth in the Master's Report (A-84) and such deficiencies would have an amplified impact on applicants over 50 years of age. No ameliorative action was initiated prior to or while Burt v McQuade, supra, was pending.

Third Cause of Action: Petitioner set forth the manner in which he had been personally damaged by the conspiracy of all the Defendants (Respondents herein) to violate Secs. 1 and 2 of the Sherman Act, such as denial of employment to practice law in

Idaho with resulting damage to the public caused by excessive charges for legal fees and restrictions on the number of lawyers admitted to compete in the practice of law in Idaho.

The minimum fee schedule of the Idaho Bar was first issued in 1959 (Ex A of #158 for history) and subject to continuous revisions until the one in force (A-105) at the time the August Bar Admission Examination was prepared and administered.

The preamble of the fee schedule included: "In case of unreasonable low fees, amongst other things, an attorney is guilty of unethical solicitation of practice." Thereby threatening under color of state law to misuse the powers vested in the Commissioners under IC §3-408 (A-50-51) to enforce the price fixing scheme.

In a motion filed Aug. 20, 1976, (#12 p 16) in the District Court, counsel (per #6 Special Assistant Attorney Generals) for the

Honorable Justices have asserted:

> "The minimum fee schedule *** was neither sponsored nor sanctioned by either the State of Idaho or the Idaho Supreme Court, nor did it have any enforceable effect through those agencies." (p 16)

The District Court made a finding that the fee schedule was in fact enforced

> "Having practiced law in the state for a long, long time under the advisory fee schedule, there isn't much question but what it was an ethical question and attorneys went around patting themselves on the back, those that didn't cut the price, and complaining about those who did, so I think there was some compulsion on attorneys to live up to the fee schedule." (p 7 of Transcript filed June 19, 1978 of March 17, 1978 proceedings.)

In an opinion filed Feb. 5, 1973, the Idaho Supreme Court authorized the Idaho courts to take judicial notice of the Bar's fee schedule for the purpose of awarding or fixing fees. Realty West v Thomas 506 P2d 830, 832. Thus placing itself in direct conflict in violation of Art. VI, Clause 2 with Northern California Pharm. Assoc. v U.S. 306 F2d 379, 386 (CA-9, 1962) denying

any learned professor exemption as a defense to price-fixing, as well as a warning issued by the Department of Justice[6]. (A-98)

This illustrates the power of the guild to "reach State authorities" U.S. v Alum.Co. of America 148 F2d 416, 428-29 fn 1 (CA-2, 1945).

It is apparent that the Idaho State Bar and its members, including the individual Defendants herein, were engaged in a conspiracy to restrain competition in the practice of law in Idaho through the period when the Bar Admission Examination for August 1972 was drawn up and administered.

Further, the withdrawal of the fee schedule by order announced in the Bar's own publication, sent only to members, without written notice by the individual lawyers to their clients and to the applicants wrongfully excluded by improper admission examinations was itself an example of further exercise of monopoly power. It is the power, even if unexercised, that is

[6] Copy filed with Idaho Supreme Court on October 16, 1972 in Docket 11174.

condemned U.S. v Griffith 334 US 100, 107 (1948), and U.S. v duPont 351 US 377, 392 (1956) notes that price fixing and control over competition are to be treated as overlapping and identical in relation to illegal monopoly power.

Included in the Third Cause was a claim based on a demand by a member of the Idaho State Bar (Rayborn) that he be paid a full fee, in accordance with the minimum fee schedule applicable to the filing of the mechanic's lien, or he would not permit his[7] client to settle a lien claim against Petitioner. (Details set forth in Jeppesen Deposition) The subsequent Van Houten litigation resulted from the Petitioner's refusal to accede to Rayborn's demands and the amount of damages could not be ascertained until Van Houten v Burt 505 P2d 333 opinion was filed Feb. 1, 1973.

By further amendment (#172) an incident

[7] Cir. Ct. Opinion errs on facts (A-3). Rayborn never represented Burt, but represented Van Houten, plaintiff, against Burt. The Complaint (#1) naming Rayborn as defendant was filed on January 30, 1976.

referred to "48 acres" was added invoking an increase in the fee to be charged Burt by attorney Benjamin from $1200 to $3000 based solely on what he stated was the necessity that he comply with the Bar's minimum fee schedule (#280 p 15).

Fourth Cause of Action:

A catch all for acts that would not be insulated even by erroneous concepts of "state action exemption" and failure by the Court to apply Ronwin at 697 (#280 p 6, and see question #5 supra (p 2-3), and malicious effort to interfere with Burt's "a.v." rating in Martindale (A-73). Under St. Ct. New Hampshire v. Piper 470 US 274, 281 (1985) Burt had a right to have his home in Idaho and his office in New York.

ARGUMENT

I. It was misrepresentation by the Idaho State Bar to file a brief amicus in Lathrop v Donohue 367 US 820 (1961) and to let stand uncorrected the Glaser summary creating the

impression of courteous accommodation to attorney applicants:

> "In eight of the nine states where they administer admissions by student candidates, State Bars also screen attorney applicants coming from other jurisdictions. The Board of Examiners or a Local Administrative Committee performs character investigations; and in a few states the Board of Examiners administers a brief examination concerning state law. The Board of Governors recommends admission to the Supreme Court." Glaser, "The Organization of the Integrated Bar," p 21, referred to be Mr. Justice Brennan in Lathrop, at p 843, fn 16.[8]

In neither Lathrop, supra, nor Hoover, supra, was there an opinion by a majority of the Court; yet both have given some clearance to integrated bars. It is appropriate at this time by a majority opinion herein to reassure the public that there is no place in the integrated bar structure to be occupied by state bars organized or operating as monopoly guilds. (See quotations from Hapgood #1, p 21).

[8](See A-84, Master's Report and p 13, supra, for true facts in Idaho

II. The Idaho statutes establishing the integrated bar (IC §§3-401, et seq. A-48) set up an organization with monopoly power because it can exclude competition through its power (IC §3-408) to conduct examination of and to reject applicants (A-122). Further, such rejectees have only a limited right of review by the Supreme Court of Idaho confined to allegations that actions of the Board were "arbitrary, capricious or malicious" (A-66, Rule 112 B). This excludes constitutional and Sherman Act allegations (A-124[9] and p. 64 of Marshall deposition). Further the Bar can fix prices through the threat of its power to discipline those who do not conform to its suggested minimum schedules. The courts of Idaho have enforced the schedule against the public by awarding legal fees based upon the schedule. (Rayborn letter May 11, 1966, Ex 9 to Jeppesen deposition)

The people of Idaho have made no grant

[9] "Failed to state grounds for review under the rules and law of this court."

of monopoly power to the State of Idaho and all powers not granted are reserved to its citizens (Art I Sec. 21, Idaho Constitution, A-34). Confirmation of this is to be found in In re Gemmill 119 P 298, 313 (ID 1911), which states that creation of monopolies by the State is an un-enumerated power reserved to the people. In view of the fact that Idaho had only become a state in 1890, the Chief Justice was knowledgeable to the meaning of Art I Section 21 of the Idaho Constitution at the time the article was adopted.

In the same year, this Court stated in Standard Oil v U.S. 221 US 1, 52 (1911):

> "The frequent granting of monopolies and the struggle which lead to a denial of the power to create them, that is to say, to the establishment that they were incompatible with the English Constitution, is known to all and need not be reviewed. ...Monopoly, as thus conceived, embraced only a consequence arising from an exertion of sovereign power."

It was the dangerous threat emanating from the grant of a monopoly by parliament

to the East India Company (not the tax itself) which precipitated the decisive act leading to the American Revolution, the Boston Teat Party. See "The Spirit of Seventy-Six," by H. S. Commager and Morris, Vol. 1, p 1 (Bobbs-Merrill, 1958). (A-130)

This Court in a decision under the Tenth Amendment[10] has stated that "no state can endow any of its corporations or any combination of its citizens with authority to restrain interstate commerce." Northern Securities v U.S. 193 US 197, 344-5, 350 (1904), cited with approval in City of Lafayette v Louisiana Power 435 US 389, 415 fn 45 (1948). Permitting a monopoly-guild to continue in Idaho would constitute an usurpation of powers reserved to the people "American Constitutional Law", L. H. Tribe, Foundation Press (1978) at p 570.

[10] Implements "the pursuit of happiness" of the Declaration of Independence and "the blessings of liberty" of the Constitution. Paul v. Virginia 8 Wall (75 US) 168, 180 (1869)

No integrated bar should be permitted to have the power to exclude competition through control of the bar admission examination process. U.S. v duPont 351 US 377, 391-2 (1956) And hence, such a bar should not decide what ameliorative admission procedure should be pursued in a state such as Idaho to apply to the admission of older applicants seeking to transfer their practices from sister states to Idaho. The greater the experience and specialization of the would-be transferees, the more they are a threat to attract legal practice from others already in Idaho.

The history of guilds is summarized[11] in "The Columbia Encyclopedia" (Columbia University 1935 at pp 770-71) and their existence for purposes of controlling the practice of law in any state is condemned in the dissent in Hoover at pp 582-585, even

[11] Components: 1) grant of monopoly by government; 2) price fixing; and 3) artificial restrictions on admission to membership

though that case was brought only under Sec. 1 of the Sherman Act (as was Goldfarb 421 US 773 (1975))

In the present case the Idaho State Bar is artificially restricting the fundamental right of older lawyers to move their practice interstate. Piper, supra at 281

The corruption represented by the Idaho State Bar's preparing and administering the August 1972 admission examination while the bar and its members were engaged in a conspiracy to restrain competition in the practice of law in Idaho in violation of the Sherman Act constituted the fraud in the admission procedures that the Court in Feldman v State Board 438 F2d 699, 703 (8th Cir. 1971) concedes would create a right to suit based on rights protected by the Fourteenth Amendment and constituted the bias condemned in Friedman v Rogers 440 US 1, 18 (1979). And as analyzed in "American Constitutional Law" (L. H. Tribe,

Foundation Press (1978)) at pp 325 and 381-82 regulation of the practice of law in Idaho by a monopoly-guild would contradict concepts of a regulatory scheme that is "open" and "fair".

ARGUMENT RELATED TO QUESTIONS PRESENTED

1-2. Dealt with above.

3. A-72, A-68 and A-69 bear on what should have been a simple problem in Van Houten, supra[12] Was Burt's attorney negligent in failing to timely file a notice of appeal. If he was, then the law of Idaho permits refiling the judgment in the District Court so that the time in which to file an appeal runs anew Andrus v. Irick 394 P2d 304, 306 (Idaho 1964).

Yet the District Court in Van Houten wrote (A-68) that only the Bar could make such a determination and the Supreme Court of Idaho agreed (A-39 was part of the record on appeal on the issue of timeliness.)

[12] Van Houten was dismissed because notice of appeal was not timely filed

So the Commissioners (elected only by lawyers) were able to prevent due process in civil litigation, Van Houten, to which lawyers were not even parties (A-72, A-69 & A-69) Goldberg v. Kelly 397 US 254, 268-71 (1970).

And the Bar was able to manipulate making the necessary determination as leverage to participate in forcing the termination of Burt v McQuade, supra (A-72 & A-118).

Thus the Bar interfered with the State court proceedings (Van Houten) and the Federal District Court proceedings (Burt v McQuade) by a conspiracy in violation of the Civil Rights Act Kush v Rutledge, supra at pp 724-25. It should be noted that historically guilds reserve to themselves the right to discipline their members as part of the regulating of guild activities.

4. Hoover was merely a Sherman Act, Sec. 1

case, whereas the present case involves major Tenth Amendment and Sherman Act, Sec. 2 "monopoly" issues.

5-6. The Circuit Court Opinion (A-1) which is marked "Not for Publication", conflicts with the Court's published opinion in Hasbrouck v Texaco, supra at p 933. This precludes the orderly administration of justice and requires Supreme Court supervision.[13]

7. The text of the question sets forth the proper analysis.

8. Litigants are entitled to due process in regard to having their claims considered by the Federal courts as to violation of their rights in violation of the U. S. Constitution.

No case cited or discussed by the Defendants in any brief or during oral argu-

[13] A subsequent panel may not overrule the decision of an earlier panel. Only the Circuit Court sitting en banc may overrule a panel. Charleston v U.S. 444 F2d 504, 506 (CA-9, 1971)

ment in the proceedings before the District Court or Circuit Court mention or discuss Northern Securities, supra, and its decision on the Tenth Amendment issue before it that "No state can endow any of its corporations or any combination of its citizens with authority to restrain interstate . . . commerce" at page 350.

The Circuit Court has disposed of the guild monopoly issue by stating (A-19) "It is unnecessary to travel the paths and alleyways of the many arguments Burt has raised in challenging the constitutionality of the Idaho Bar statutes and rules".

Burt has continuously cited Northern Securities on the guild issue ever since Mar. 31, 1978 (#45 p 3). In response Defendants have merely cited and quoted from a long string of cases in which no guild issue was present and the actions were of the various states, as the plurality decided was the situation in Hoover.

The Circuit Court analysis (A-14-16) overlooks that it is the Idaho State Bar that decides which applicants are rejected (A-122) and review by the Supreme Court of Idaho is confined by Rule 112 B (A-66) to whether the acts of the Bar Commissioners were "arbitrary, capricious or malicious". Any allegations that fall outside the three categories are dismissed as failing "to state grounds for review under the rules and law of this Court" (A-124). It is obviously the desire of the Bar that the Supreme Court self-emasculate itself so that constitutional and Sherman Act violations may not be weighed in State Supreme Court[14] (#1 p 24 explains the basis for the Bar's power over the Court.)

9. The issue of the Judge's son's participation in the conspiracies to violate constitutional rights and the Sherman Act required action by the Court sua sponte under 28 USC 455(b)(5) and (e) (also see

[14] Exceeds restrictions on state courts imposed by General Invest. Co. v. Lake Shore, 260 US 261, 286 (1922)

#280 p 22). U.S. v Sciuto 531 F2d 842, 845 (CA-7, 1976) Defendants and the Court knew the problem existed long before it was ever disclosed to Burt.

For the reasons aforesaid, it is respectfully prayed that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Ninth Circuit.

DATED This 25 day of April, 1988.

Respectfully submitted,

Stewart A. Morris
Counsel for Petitioner

PROOF OF SERVICE

I, Stewart A. Morris, a member of the Bar of the United States Supreme Court, representing the Petitioner on whose behalf service of the foregoing document has been made, hereby certify that all parties required to be served have been served in compliance with Supreme Court Rule 28.3, by depositing a copy of the foregoing document in a United States Post Office, First Class, postage prepaid, adressed to counsel of

record at his post office address for each party listed as follows:

CLEMONS, COSHO & HUMPHREY
815 West Washington Street
Boise, Idaho 83702

ELAM, BURKE AND BOYD
P. O. Box 1559
Boise, ID 83701

on this 25 day of April, 1988.

Stewart A. Morris
Attorney for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIAM R. BURT, Plaintiff-Appellant,	)	
v.	)	No. 83-3878
THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO, et al., Defendants-Appellees,	)	D.C. No. 76-22

APPEAL from the United States District Court for the District of Idaho (Boise).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court; Court for the _____ District of Idaho (Boise) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered Dec. 2, 1987

NOT FOR PUBLICATION
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIAM R. BURT, Plaintiff-Appellant,	)	Case No. 83-3878
v.	)	D.C. # 76-22
THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO, et al., Defendants-Appellees,	)	MEMORANDUM

Appeal from the United States District Court
For the District of Idaho
Ray McNichols, District Judge, Presiding
Argued and submitted on September 9, 1987
Seattle, Washington

Before: KENNEDY and BEEZER, Circuit Judges, and AGUILAR,* District Judge.

*Honorable Robert P. Aguilar, United States District Judge for the Northern District of California, sitting by designation.

I. INTRODUCTION:

Appellant William Burt seeks damages as well as declaratory and injunctive relief against the Justices of the Supreme Court of Idaho (the "Justices"), the Idaho State Bar Association (the "Bar"), the Board of Commissioners of the Bar, (the "Board"), the individuals who were commissioners and officers of the Bar during the period of injury, and Robert Rayborn, a lawyer who represented Burt in a court proceeding over a decade ago. The district court denied any relief. Appellant now challenges the procedural and substantive handling of the case below. We affirm the district court in all respects.

II. FACTS:

(A) Overview:

William Burt is licensed to practice law in the State of New York. In 1972, after maintaining a residence in Idaho for some time, Burt took and failed the Idaho

bar examination. After he took and failed the exam again in 1975, he initiated this lawsuit. In count one of his Amended Complaint, Burt alleges that the statute authorizing the bar admission process is unconstitutional on its face and as applied to him. In count two, Burt complains of the treatment he received in two lawsuits which were resolved in 1972. Essentially, Burt contends that he was denied access to the courts and was the victim of "malicious and vindictive" treatment by the Justices and the Bar. In count three, Burt alleges that all of the defendants participated in a conspiracy to stifle competition in the provision of legal services in Idaho.

(B) The Proceedings and Disposition Below:

The original complaint was filed on January 30, 1976, and contained three counts. On March 21, 1978, the district court dismissed the entire complaint for lack of subject matter jurisdiction and on

sovereign immunity grounds. On appeal in October 1980, a panel of this circuit affirmed dismissal as to count two (malicious treatment, denial of due process and access to courts), but reversed and remanded as to count one (constitutional issues) and count three (antitrust). The present Amended Complaint was filed in March 1982. Ignoring the ruling of the circuit, Burt' s amended complaint included, verbatim, count two of the original complaint. Burt also added a count four, complaining vaguely about denial of access to judicial review in two cases concluded in Idaho in 1972.

On July 2, 1982, the district court judge granted a motion to dismiss counts two and four of the Amended Complaint. At the same hearing, the court also denied certification of a class with respect to count three (antitrust claims).

At a hearing on January 31, 1983, the

court granted summary judgment against part of count three and dismissed appellees Justices as to all of count three. In the order of February 7, 1983, formalizing the ruling, the court separated count three into two components. Those claims alleging a conspiracy to restrain trade by use of the bar examination (preparation, administration, and grading) and rules and regulations regarding admission to practice were dubbed "admissions" claims. Those claims involving the use of a minimum fee schedule issued and enforced by the Bar between the years 1953 and 1973 were called "fee schedule" claims. The court granted summary judgment as to the admission claims but not as to the fee schedule claims, except with respect to the Justices who were dismissed entirely from count three.

On March 11, 1983, the court denied appellant leave to amend his complaint. The court also denied appellant's motion for

summary judgment on count one and the remainder of count three and ordered briefing for purposes of deciding count one on the basis of stipulated facts.

On March 14, 1983, the parties submitted count one (§§ 1983 and 1988 claims of constitutional rights violations) to the judge to decide based on stipulated facts and deposition transcripts. In light of the evidence presented, the court found that no constitutional rights had been violated, nor any privileges and immunities infringed. Accordingly, judgment was entered in favor of appellees.

By the date of March 14, 1983, the only remaining component of appellant's Amended Complaint was that part of count three described as the fee schedule claims. A jury was impaneled and heard evidence. At the close of appellant's case, the court directed a verdict in favor of appellees. Final judgment was entered on April 8, 1983.

On May 9, 1983, a motion for a new trial was denied. Appellant now appeals the entry of judgment and all of the orders entered by the district court in the case below.

III. DISCUSSION:

(A) DISMISSAL OF COUNTS TWO AND FOUR:

Count two of the Amended Complaint is a hybrid claim challenging the constitutionality of the bar exam on due process grounds and attacking actions of the Bar and Justices in relation to an earlier lawsuit filed by Burt. These claims were raised and dismissed once before. The first dismissal was affirmed on appeal and we renew that affirmance.

To the extent that the allegations in count four repeat claims made in count two, they were properly dismissed for the reasons that count two was properly dismissed. The only element of count four not contained in count two is an incident involving the Bar's

refusal immediately to investigate Burt's complaint against his lawyer filed in 1972. On its face, this allegation is meritless and was properly dismissed for failure to state a claim. See Federal Rule of Civil Procedure 12(b)(6). Hence, the district court properly dismissed the claim.

(B) DENIAL OF CLASS CERTIFICATION AS TO THE COUNT THREE FEE SCHEDULE CLAIMS:

Class certification on the third claim alleging antitrust violations was denied because appellant's proof of numerousity was too speculative and his situation was too unique to make him the representative of the class sought to be certified. On appeal, the standard of review for this ruling denying class certification is abuse of discretion. See Siles v. ILGWU Nat'l Retirement Fund, 783 F.2d 923, 926 (9th Cir. 1986); Wrighten v. Metropolitan Hospitals, 726 F.2d 1346, 1352 (9th Cir. 1984).

Burt's lawsuit contains far-reaching claims which extend beyond the ordinary. He

alleges that malicious and unconstitutional acts were directed specifically against him by the Bar and Justices of the State of Idaho. By his own description, he stands in an extraordinary position vis-a-vis the legal establishment in Idaho, a position that makes him decidedly atypical. Furthermore, the relief he seeks is both more elaborate and systematic than would be sought by the typical fee-schedule plaintiff. Consequently, the district court did not abuse its discretion in refusing to certify Burt to lead a plaintiff class in litigating the fee schedule antitrust claims.

(C) SUMMARY JUDGMENT AS TO THE COUNT THREE "ADMISSIONS" CLAIMS:

(i) Standard of Review:

As described above, the district court divided count three into two components. On January 31, 1983, and in an order that followed on February 7, 1983, the district

court granted a summary judgment in favor of defendants with respect to the admissions claims. The granting of a motion for summary judgment is reviewed on a de novo basis. See Lucas v. Bechtel Corp., 800 F.2d 839, 843 (9th Cir. 1986) (discussing this standard in context of an antitrust suit); Golden v. Faust, 766 F.2d 1339, 1340 (9th Cir. 1985).

The "State action" exemption refers to the fact that the Sherman Act was not intended to apply to actions of the States. In Parker v. Brown, 317 U.S. 341 (1943), the Supreme Court held that an anticompetitive marketing program which "derived its authority and its efficacy from the legislative command of the state" did not violate the Sherman Act. Id. at 350. The explanation for this exception is that the Sherman Act "was intended to regulate private practices and not to prohibit a State from imposing a restraint as an act of government."

Goldfarb v. Virginia State Bar, 421 U.S. 773, 788 (1975), citing Parker, 317 U.S. at 350-52, and Olsen v. Smith, 195 U.S. 332, 344-45 (1904).

The court has developed a two-pronged standard for assessing the availability of the state action exemption to antitrust liability. First, the challenged restraint must be "one clearly articulated and affirmatively expressed as state policy." California Retail Liquor Dealers Ass'n v. Midcal Alum., 455 U.S. 97, 105 (1980), quoting City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 410 (1978) (opinion of Brennan, J.). Second, the policy must be "actively supervised" by the State itself. Id. In a variety of circumstances, the Court has applied these criteria either to immunize state action from antitrust liability, see, e.g., Bates v. State Bar of Arizona, 433 U.S. 350 (1977) (involving Arizona Supreme Court's

complicity in ban on advertising of legal services); Hoover v. Ronwin, 466 U.S. 558 (1984) (involving the Arizona Supreme Court's administration of the state bar examination), or to deny the invocation of the state action exemption. See, e.g., Community Communications Co. v. City of Boulder, 455 U.S. 40 (1982) (municipal regulation of cable television industry); California Retail Liquor Dealers Ass'n, 455 U.S. 97 (1980) (private price-fixing scheme authorized by state statute); Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975) (minimum fee schedule enforced by integrated state bar).

(ii) Analysis of the State Action Exemption:

The task of deciding whether the district court was correct in ruling that the state action exemption applies in this case is rendered facile by the Supreme Court's decision in Hoover v. Ronwin, 466

U.S. 558 (1984). Although it was a plurality opinion (4-3 with two abstentions), Ronwin is controlling in this instance. Burt has mounted essentially the same challenge to the Idaho bar regime that Ronwin unsuccessfully mounted against the bar examination scheme in Arizona.

Comparing the laws of Arizona with those of Idaho, one finds that the standards for the regulation of admission to the legal profession are very similar. The Supreme Court of Idaho is invested by statute with complete and final authority to control admission to the state's integrated bar. The one difference from Arizona is that rather than allowing the high court to select a bar committee, the Idaho statute provides for election of the Board of Commissioners by all members of the state bar. Notwithstanding election independent of the Idaho Supreme Court, the Board's authority is subordinate to the supreme

court at every juncture. Section 3-408 of the Idaho Code explicitly provides the following:

> The [Board] shall have the power to determine, by rules, subject to the approval of the Supreme Court, the qualifications and requirements for admission to the practice of the law and to conduct investigation and examination of applicants, and it shall from time to time certify to the Supreme Court the names of those applicants found to be qualified. The approval by the Supreme Court of the applicants whose names are so certified, shall entitle them to enrollment, as members of the bar of this state, and to practice law upon paying the required fees and taking the oath. (emphasis added)

Thus, like the Supreme Court of Arizona in Ronwin, the Supreme Court of Idaho retains complete authority to regulate who is admitted to practice law in the State of Idaho. If the question is indeed "who denied [Burt] admission to the [Idaho] Bar?," Ronwin, 466 U.S. at 581, then it is clear in this case that the answer is the Idaho Supreme Court. Any doubt is completely removed by the fact that by law

Burt was permitted to and did pursue direct appeal to the Idaho Supreme Court. In Docket 11174, Burt raised his grievances directly with the Justices. The Justices refused to admit him over the advice of the Board and denied his petition. This final and direct appeal procedure to the high court in Idaho is identical to the Arizona procedure in Ronwin. The Court in Ronwin found this compelling evidence of the existence of state action.

Beyond the contents of the statute and rules, to grapple with the gist of Burt's admission allegations would be "to look behind the actions" of the Justices and, in the opinion of the plurality in Ronwin, would "emasculate" the state action doctrine articulated in Parker v. Brown. Unless the district court here was willing to assume that the Justices "failed to comply with state law, and allowed the [Board] alone to make the decisions" regarding the August

1972 bar examination, application of the state action exemption was appropriate. 466 U.S. at 582. In view of the Ronwin plurality's conclusion that courts must assume that a state supreme court does its job, summary judgment was properly granted against Burt in his admissions antitrust claim in count three.

(D) ENTRY OF JUDGMENT AGAINST BURT ON COUNT ONE:

Count one contains Burt's assault on the constitutionality of Idaho's bar admission statute. The crux of this count is found in the following passage from the Amended Complaint:

> No concern or consideration was given by the Idaho State Bar as to the age, experience and special expertise of the Plaintiff in the construction, contents and duration of the Bar examinations he was required to take and pass in August, 1972 (then age 58) and February, 1975 (then age 60).

Amended Complaint at 9, lines 14-19.

The parties submitted to the district court a statement of stipulated facts vis-a-vis count one. That statement reported that

every applicant, including those admitted to practice law before courts in other states, must take and pass the Idaho bar examination. Under certain conditions, an out-of-state attorney is permitted a waiver with respect to the multi-state portion of the Idaho bar examination, but other than that concession to out-of-state attorneys, all applicants approach the examination on a level playing field. Age, experience, training, or position are not considered by the Board in preparing, administering or evaluating the examination. Burt contends that this is unconstitutional both in principle and in application to himself, and he offers five or six lines of attack on the constitutionality of the bar admission statute. The standard of review for legal conclusions is de novo. The standard of review for findings of fact, even though drawn from a written record, is whether the finding was clearly erroneous. Burlington

Northern v. Weyerhaeuser Co., 719 F.2d 304, 307 (9th Cir. 1983).

It is unnecessary to travel the paths and alleyways of the many arguments Burt has raised in challenging the constitutionality of the Idaho bar statute and rules. The statute and rules did not violate Burt's right to travel, nor did they violate the Full Faith and Credit, Privileges and Immunities, Commerce, Due Process, or Equal Protection Clauses of the Constitution.

In a nutshell, Burt's constitutional assault upon the Idaho bar admissions scheme amounts to a demand for special treatment. The various theories he offers challenging the statute and rules have been argued, considered, and rejected on several occasions by federal courts in this country. The administration of any examination for bar admission is bound to give some applicants an advantage over other applicants. Deep thinkers and slow writers inevitably

will be disadvantaged as against the glib and the nimble. Those who have faced the dragon in one state may have to face it again in another state before being admitted to practice there. One state may set higher standards than another state or administer a more rigorous examination. The principles that Burt invokes, drawn from both the Constitution and the concept of federalism, simply do not demand homogeneity or perfect equality among all the states vis-a-vis admission to practice law. The result, as yielded in this case, is sometimes unpleasant but is not unconstitutional.

(E) REMAINDER OF THE CASE:

Burt raises a host of other substantive and evidentiary challenges to the district court's judgment. None of these challenges has merit. The district court's handling of the evidence and its ruling in granting a motion for a directed verdict as to Burt's fee schedule claims were proper in all

respects. Furthermore, the district court did not abuse this discretion in refusing to recuse himself. Burt is not entitled to attorneys fees. The district court properly handled all summary judgment motions brought before it, and justifiably refused leave to amend the complaint.

IV. CONCLUSION:

The judgment of the district court is affirmed in all respects.

IT IS SO ORDERED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WILLIAM R. BURT, Plaintiff-Appellant, vs. THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO, et al., Defendants-Appellees.	) C.A. No. 83-3878) D.C. No. CV-76-22 RM)))) ORDER)))	

Before: BEEZER and NOONAN, Circuit Judges, and AGUILAR,* District Judge

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge in active service has requested a vote to rehear the matter en banc.

Pursuant to Rule 35(b) of the Federal Rules of Appellate Procedure, the petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

The petition for rehearing is denied

and the suggestion for rehearing en banc is rejected.

*Honorable Robert P. Aguilar, United States District Judge for the Northern District of California, sitting by designation.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM R. BURT, Plaintiff-Appellant, v. THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO, et al., Defendants-Appellees.	No. 78-2659 D.C. No. 1-76-22 MEMORANDUM

Appeal from the United States District Court for the District of Idaho
Ray McNichols, District Judge, Presiding
Argued and Submitted August 11, 1980

Before: WRIGHT and SNEED, Circuit Judges, and ENRIGHT*, District Judge

Appellant's complaint was designed to set forth what it alleges to be three causes of action. Although it is not

*Honorable William B. Enright, United States District Judge for the Southern District of California, sitting by designation

unreasonable to characterize each as an effort on the part of the appellant to gain admission to the Idaho bar, in fact the theory of each cause is different. Speaking quite generally, the first proceeds under 42 U.S.C. §§ 1983 and 1988 against the Justices of the Idaho Supreme Court and certain officials of the Idaho State Bar and complains that certain statutes and rules governing admission to the Idaho bar deprive the appellant and "those similarly situated" of certain constitutional rights. The second very largely repeats the first, but omits any claim on behalf of a class of "those similarly situated." The third also incorporates much of the first, together with some additional allegations, and seeks relief under the Sherman Act.

The district court dismissed the entire complaint for want of federal

jurisdiction and, with respect to the Justices of the Supreme Court of Idaho, because of their immunity from liability. We reverse and remand with respect to the first and third cause of action. In doing so we express no opinion with respect to the merits of these two causes of action.

The principal authority for our action is Brown v. Board of Bar Examiners of the State of Nevada, et al., 623 F.2d 605 (9th Cir. 1980) [C.A. No. 79-4529]. There we distinguished between "a constitutional challenge to the state's general rules and regulations governing admission" and a claim that a state wrongfully denied a particular applicant admission without regard to the basis on which the individual claim is based. Id., slip op. at 4229. Only with respect to the first does the district court have jurisdiction. Id.

The second is governed by MacKay v. Nesbett, 412 F.2d 846 (9th Cir. 1969), cert. denied, 396 U.S. 960 (1969). We hold that appellant's first cause falls within the category of cases over which the district court has jurisdiction, while his second is governed by MacKay v. Nesbett, supra.

With respect to appellant's third cause of action, jurisdiction exists under 28 U.S.C. § 1337 and 28 U.S.C. § 2201.

Finally, we believe it premature to pass upon the immunity of the Justices of the Supreme Court of Idaho in the light of Supreme Court of Virginia v. Consumers, Union, ____ U.S. ____(1980), 100 S. Ct. 1967.

Reversed and Remanded.

October 10, 1980

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM R. BURT, Plaintiff-Appellant, v. THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO, et al., Defendants-Appellees.	)	No. 78-2659 ORDER

Before: WRIGHT and SNEED, Circuit Judges and ENRIGHT*, District Judge

Appellant's petition for rehearing is denied. All other relief sought by appellant in his motion filed October 22, 1980 also is denied.

October 30, 1980

*Honorable William B. Enright, United States District Judge for the Southern District of California, sitting by designation.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WILLIAM R. BURT, Plaintiff, vs THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO, et. al., Defendants.	Civil No. 1-76-22 JUDGMENT

This action was before the court on two Cause of Actions stated in the Plaintiff's Amended Complaint, to wit: Cause One and Cause Three.

As to Cause One the parties submitted the matter to the court on a stipulation for a factual and legal determination by the court. The court fully considered the matter and made Findings of Fact and Conclusions of Law thereon determining that the defendants were entitled to judgment as a matter of law.

The Third Cause of Action initially consisted of two claims. In the first,

plaintiff alleges violations in connection with his status as a prospective competitor of Idaho attorneys. Plaintiff brought the second claim as a consumer of legal services. As to the first claim the court entered partial summary judgment for the defendants on the ground that the claim was barred by the State action exemption to this Antitrust Laws. The second claim came on for trial before a jury, but at the conclusion of the plaintiff's case, the court directed a verdict against the plaintiff and subsequently entered an order to that affect.

The foregoing completes all of the presently viable claims made by the plaintiff and final judgment is hereby entered:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Judgment is hereby entered in favor of the defendants, and each of them, against the plaintiff, on the First Cause of

Action of Plaintiff's Amended Complaint, and the plaintiff shall take nothing thereby.

2. Judgment is hereby entered in favor of the defendants, and each of them, and against the plaintiff, on the Third Cause of Action of Plaintiff's Amended Complaint, and the plaintiff shall take nothing thereby.

3. The defendants are granted their costs in the sum of $_____.

/s/ Ray McNichols
RAY McNICHOLS
UNITED STATES DISTRICT JUDGE

U.S. CONSTITUTIONAL PROVISIONS

ARTICLE IV.--STATES--RECIPROCAL RELATIONSHIP BETWEEN STATES AND WITH UNITED STATES

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

ARTICLE VI.--DEBTS VALIDATED. SUPREME LAW OF THE LAND

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law

of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT X--RESERVED POWERS TO STATES

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV.--CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of

the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF THE STATE OF IDAHO

ART. 1, §21

§21. Reserved rights not impaired.-- This enumeration of rights shall not be construed to impair or deny other rights retained by the people.

§1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

§2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§26. Injunctive relief for private parties; exception

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this act [15 USCS §§13, 14, 18, and 19], when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be

construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven [49 USCS §1 et seq.] in respect to any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. (Oct. 15, 1914, c. 323, § 16, 38 Stat. 737.)

28 U.S.C.

§455 Disqualification of justice, judge, magistrate, or referee in bankruptcy

(a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household has a financial interest in the subject matter in contro-

versy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

....

(e) No justice, judge, magistrate or referee in bankruptcy shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

42 USCS

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable

to the parties injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

§1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duty. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his

lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties; (2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented

to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire to go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing

or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right

or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

§1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as

modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§1681 et seq.], or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code [26 USCS §§ 1 et seq.], or title VI of the Civil Rights Act

of 1964 [42 USCS §§ 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

3-401. Purpose of chapter.--
Recognizing that the practice of the legal profession is a privilege granted by the state and not a natural right of the individual, it is deemed necessary as a matter of business policy and in the interests of the public to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper and unauthorized practice of law and unprofessional conduct of members of the bar.

3.402. Establishment of board--
Members--Term of office--Appointment--
In order to more effectively carry out the purposes and intents of this act, there is hereby established in the department of self-governing agencies a board of commissioners of the Idaho State Bar, consisting of five (5) members to hold office for a term of three (3) years each and until their successors are elected and qualify, and to be appointed in the manner hereinafter provided. There shall be one (1) member of the board of commissioners from each [of] the northern, eastern and western divisions of Idaho, and two (2) members of the board of commissioners from the central division. Each commissioner must be a member of the Idaho State Bar residing within the division from which he is selected at the time of his appointment and during his term of office.

3-403. Time and manner of appointment. --The board of commissioners shall be appointed by the resident members of the Idhao State Bar who shall vote by ballot. The candidate from any division receiving the greatest number of votes of that division shall thereby be appointed commissioner from such division. Only residents of a division may vote for candidates for commissioner of that division. The ballots shall be deposited in person or by mail with the secretary of the board, or such other officer as it may designate. There shall be an annual election by the resident members of the Idaho State Bar for the purpose of appointing successors to the commissioners whose terms expire. A commissioner shall be appointed during 1974 and every third year thereafter from each the northern and central divisions; during 1975 and every third year thereafter from each the western and central divisions; and during 1976 and every third year thereafter from the eastern division. The board shall fix the time for holding the annual election and prescribe rules and regulations in regard thereto not in conflict with the provisions of this act. The board shall, in accordance with its rules, give at least sixty (60) days' notice by mail of the time for holding the election each year. In the event a vacancy shall occur on said board otherwise than by expiration of the term of a commissioner, such vacancy shall be filled by appointment by the remaining members of said board. Such vacancy shall be so filled from the members of the bar resident in the division where such vacancy occurs.

3-405. Member of the Idaho State Bar defined.--All persons who have been heretofore, or shall hereafter be, duly admitted to practice law before the Supreme Court of this state, and who have not been disbarred or suspended therefrom, and who shall have paid the license fee in this Act provided for, and all judges of the district and Supreme Courts of this state, and of the district court of the United States for Idaho, are hereby declared to be members of the Idaho State Bar.

3-408. Admission to practice and disbarment proceedings --Rules and by-laws--Power of board to adopt--Supervisory power of Supreme Court.--The board of commissioners shall have power to determine, by rules, subject to the approval of the Supreme Court, the qualifications and requirements for admission to the practice of the law and to conduct investigation and examination of applicants, and it shall from time to time certify to the Supreme Court the names of those applicants found to be qualified. The approval by the Supreme Court of the applicants whose names are so certified, shall entitle them to enrollment, as members of the bar of this state, and to practice law upon their paying the required fees and taking the oath. The board shall formulate rules governing the conduct of all persons admitted to practice and shall investigate and pass upon all complaints that may be made concerning the professional conduct of any person admitted to the practice of the law. In all cases in which the investigation, in the opinion of a majority of the board, justifies such a course, it

shall recommend to the Supreme Court such disciplinary action by public or private reprimand, suspension from the practice of the law, or exclusion and disbarment, therefrom, as the case shall in its judgment warrant. Upon the making of any recommendation by the board reprimanding, suspending, or excluding or disbarring any member of the Idaho State Bar from the practice of the law, the board shall cause the record of proceedings in said matter or a copy thereof certified by its secretary or president to be filed with the clerk of the Supreme Court. The Supreme Court shall thereupon enter such judgment in said matter as it deems proper. The board of commissioners shall also have power to make rules and by-laws, subject to the approval of the Supreme Court, not in conflict with any of the terms of this Act concerning the selection and tenure of its officers and committees and their powers and duties, and generally for the control and regulation of the business of the board and of the Idaho State Bar.

The board of commissioners shall also have power after proceedings as in other cases of discipline to recommend to the Supreme Court the discipline of its officers and the members of its committees in the event of refusal, neglect, failure or corrupt or wrongful performance of their respective duties.

STATE OF IDAHO
RULES
of
THE SUPREME COURT
and
THE BOARD OF COMMISSIONERS
of the
IDAHO STATE BAR
Governing
Admission to Practice Law
Appearances by Non-Resident
Attorneys
House Counsel Certificate
Limited Licensure of Legal Interns

As adopted by the Board and approved by the Supreme Court of Idaho, effective January 9, 1955, as revised and amended October 24, 1970 and June 24, 1971.

Rule 101. All admissions to the Bar of the State of Idaho shall be in accordance with the procedure set forth herein.

Rule 102. Eligibility Requirements.--Each applicant shall show to the satisfaction of the Board that he (1) is a citizen of the United States, (2) is 21 years of age or over, (3) possesses the requisite general and legal educational qualifications hereinafter prescribed, (4) is a person of

good moral character and (5) is now a resident or intends immediately to become a resident of the state of Idaho and intends to engage in the practice of law in the State of Idaho.

Rule 103. Educational Qualifications.-- Except as provided in Rule 104 all applicants shall be required to show graduation from a law school fully approved by the American Bar Association. Proof of applicant's eligibility under this section shall be made by filing with the Executive Director at the time of filing application a duly authenticated copy of his transcript or transcripts of credits covering his law school.

Rule 104. Attorney Applicants.--Any person admitted to practice before the highest court of another state or of any jurisdiction where the Common Law of England constitutes the basis of jurisprudence and who has been actively engaged in the practice of

law as his principal occupation in any such jurisdiction or jurisdictions for not less than 5 years within the last 7 years immediately preceding the filing of his application may apply for admission to the Idaho State Bar. Such attorney applicants shall be required to meet the eligibility requirements set forth in Rule 102 relating to citizenship, age, residence in this state and moral character and shall intend to engage in the practice of law in this state. Teaching in a law school fully approved by the American Bar Association and service as a Judge of a court of general or appellate jurisdiction of any state or federal court in the United States shall upon request be considered as practice within the meaning of this rule. Such person upon request shall present duly authenticated certificates from the highest courts of each of the states in which he has been admitted at any time showing the fact of admission, the date

thereof and that he is still in good standing therein. Such attorney applicants shall further meet the requirements of Rule 105.

Rule 105. (A). Examination Required.--No person shall be admitted to practice law in this state until he shall have applied for permission to take and shall have successfully passed a bar examination.

(B). Times of Examination.--Bar Examinations shall be conducted in April and September of each year on such days and at such places as shall be fixed by the Board. The Board may, in its discretion, advance or postpone any examination to any day within the two preceding or following months.

Rule 106. (A). Application--Contents--Form.--Every applicant for admission to practice law in the State of Idaho shall file an application for admission and shall contain such information relating to the applicant's age, residence, addresses, citizenship, occupations, general education,

legal education and moral character, as the Board of Bar Commissioners may require. The Board may also require applicants to furnish one or more sets of fingerprints. The form of application shall be prescribed by the Board and the Executive Director shall furnish the same to applicants upon request.

(B). Time for Filing of Applications.--An application for permission to take an examination shall be filed in the office of the Executive Director at least 60 days next preceding the commencement date of the examination. The Board shall not consider an application filed after the times herein fixed unless it be accompanied by applicant's affidavit showing justifiable cause for failure to make timely filing. The Board shall reject any late application when consideration thereof may make thorough character investigation of the applicant impracticable or interfere with the established procedure of the Board in the prepar-

ration or administration of the examination.

(C). Fees.--Each applicant shall at the time of filing his application pay to the Executive Director an examination fee of $75.00. Applicants who have been admitted to practice law elsewhere and have there engaged in the practice, shall, at the time of filing application, pay to the Executive Director additionally, an investigation fee of $100.00.

(D). Refunds.--No refund of an examination or investigation fee shall be made.

Rule 107. Investigation of Applicants.--The Board will make, or cause to be made, an investigation of each applicant's moral character and record, and shall make inquiry with respect thereto of not less than two attorneys actively engaged in the practice of law and of not less than two persons, other than attorneys who are not related to the applicant, who are well acquainted with the applicant. Answers to inquiries made by

attorneys who reside and practice outside this state shall be made upon oath. Answers to all such inquiries shall be confidential and the nature and source of information so obtained shall not be revealed by the Board or any employee thereof except to the Supreme Court.

Rule 108. (A). Certificate Permitting Examination.--Upon determination made by the Board that the applicant has met all requirements of eligibility the Executive Director shall issue to him a Certificate permitting examination and mail the same to the applicant at the address stated on his application. If the Board shall reject an applicant, written notice thereof shall be given as provided in Rule 113. No person shall be permitted to take an examination unless he presents at the time of examination, the Certificate herein referred to issued to him within one year prior thereto.

(B). Re-Examinations--An applicant whose

certificate has expired may reapply under the same conditions and by payment of the same fee as an original applicant; provided, however, that if such applicant shall have failed one or more examinations, he shall show such fact, and if he shall have failed two examinations he shall not be examined again until he shall have shown to the satisfaction of the Board that since his last examination he has diligently studied the law. Such showing shall be made by the applicant's affidavit setting forth the nature and extent of such study. An applicant will not be examined more than three (3) times without special permission from the Board, written notice thereof shall be given as provided in Rule 113. No applicant who shall have failed one or more examinations shall be examined again unless he shall have paid to the Executive Director a re-examination fee of Fifty and no/100 ($50.00) Dollars prior to taking any such

further examination; such fee shall accompany the filing of the application for re-examination.

(C). Review.--The decisions of the Board under this Rule shall be final unless the Supreme Court shall grant a review within the time and following the procedure hereinafter provided in Rule 112.

Rule 109 (A). Examination--Preparation.--The Board, or Examining Committee appointed by the Board, shall prepare the questions for use on examinations. Written examination may be supplemented by oral examination before the Board or Examining Committee.

(B). Notice of Place of Examination.--Applicants shall be required to make inquiry at the office of the Executive Director as to the dates and place or places of examination and each applicant shall give written notice to the Executive Director that he will present himself for examination at least 15 days prior to the first day of the

examination.

(C). Procedure for Grading.--Examination grading standards and procedures for grading bar examinations shall be as prescribed in writing by the Board and approved by the Supreme Court. A copy of the standards and procedure shall be given to each member of the Examining Committee and grading of each examination shall be in accordance therewith.

(D). Passing Grade.--A grade of not less than 70% of the highest possible grade shall be required as a passing grade on an examination. The Board shall not certify the name of any applicant as eligible for admission who receives a grade below passing. A grade as found and determined by the Board shall be final.

Rule 110. Certificate of Eligibility and Procedure for Admission.--Upon a determination by the Board that an applicant possesses all of the requirements of

eligibility for admission to the bar and that he has successfully passed the bar examination, the Board shall forthwith certify to the Supreme Court that such applicant is eligible for admission. If no written objection to the applicant's admission is filed with the Clerk of the Supreme Court by any person within 10 days from the date such certificate is lodged in the office of the Clerk, the Clerk shall thereupon give written notice to the applicant requiring him to appear in person before the Court within 6 months from the date of mailing of such notice to take the oath of admission. If within such period the applicant shall appear at a time when the Court is not in session, the oath may be administered by the Clerk or by any individual justice. Upon taking the oath and paying the lawyer's annual license fee for the then current year and such other fees as may be required by law or rule of

the Court, the applicant shall be enrolled as a member of the Bar of the State of Idaho and the Court will issue a certificate of admission. If the applicant does not appear or present himself for admission within the 6 month's period, he shall not be admitted until he shall have shown to the satisfaction of the Court, in such manner as it may require, that at all times since issuance of the certificate of eligibility he has been and still is a person of good moral character. In the event any written objection to admission of an applicant is filed as hereinabove mentioned the Court shall cause an investigation to be made of the charges therein assigned as grounds of objection and it shall thereafter order withdrawal of objections or refuse admission of the applicant. Upon refusal of admission the applicant may, within 10 days thereof, petition for a hearing thereon before the Court or before a referee appointed pursuant

to the Court's order of reference. Procedure upon review shall conform to that prescribed in Rule 112.

Rule 111. Rejection of Applicant.--The Executive Director shall, by registered or certified mail, forthwith give notice to all applicants who fail to receive a passing grade on the examination for admission to the Bar. The Board's determination shall be final as to whether the applicant shall have received a passing grade on the examination. If the applicant is not recommended for admission in any other particular, notice by registered or certified mail shall be given said applicant setting forth the reasons therefor. Procedure and ground for review by the Supreme Court are set forth in Rule 112.

Any applicant who failed, upon written request to the Executive Director, may examine his examination papers and grades, at the Idaho State Bar office, but no

examination question shall be duplicated, copies or removed from the Bar office. Thirty (30) days following mailing of notices of failure the Executive Director shall destroy all examination papers, unless an appeal has been filed by one or more of the applicants. In the case of an appeal, the Executive Director shall destroy all examination papers thirty (30) days after a final determination of the petition for review has been made by the Idaho Supreme Court.

Rule 112. (A). Review by Supreme Court--Any applicant may petition the Supreme Court for review of any decision of the Board issued under Rule 108 and under Rule 111, if within a period of twenty (20) days from the date of the mailing of the required notice pursuant to rule, the applicant shall file a verified petition for review, together with five (5) copies, with the Clerk of the supreme Court, accompanied by a certificate

showing service on the Executive Director of four (4) copies of the petition. A filing fee of $12.00 as provided by I.C. Section 1-402 and an additional fee of $3.00 as provided by I.C. Section 1-2003 shall be paid to the clerk.

(B) Grounds for Review--Such petition shall only be reviewable by the Supreme Court if it is alleged that through the arbitrary, capricious or malicious action of the Board of Commissioners, such applicant (1) was denied a certificate permitting examination under Rule 108, or (2) was denied a passing grade by the Bar examination, or (3) was denied a certificate of eligibility for admission upon any other grounds, which allegations in said petition shall set forth with particularity the alleged acts of the Board upon which said petition for review is based.

(C) The Board of Commissioners may, within twenty (20) days after such service upon the

Executive Director of the four (4) copies of the petition for review, or within such further time as the Court may grant, serve upon the applicant and file in the Court an answer. If any such answer is served and filed, the applicant may, within fifteen (15) days thereafter or within such further time as the Court may grant, serve and file a reply thereto.

(D) The Supreme Court shall make its determination from the pleadings filed within the time provided or the court may order a hearing thereon for purposes of receiving additional evidence or arguments upon such issues as maybe specified by the Court.

(E) Any applicant filing petition for review shall have the burden of establishing to the satisfaction of the Supreme Court the allegations contained in his petition.

August 30, 1971

Mr. William R. Burt
Deer Creek Ranch
Hailey, Idaho 83333

Re: Van Houten vs. Burt et al

Dear Mr. Burt:

I have received your letter of August 26, 1971, and have lodged the same in the file and forwarded a copy to the Commissioner of the Idaho State Bar.

If you wish to lodge a complaint it should be with them. Under I.C. 3-408 and Rule 1 of appellate rules of the Supreme Court of the State of Idaho the investigation is with the Bar Commission with approval of the Supreme Court.

As such I don't have the power to institute the investigation you suggest. I don't intend to lodge a complaint by my sending a copy to the Bar Commission. For a complaint to receive effect it should be filed by you.

Sincerely,

/s/ Francis J. Rasmussen
Francis J. Rasmussen
District Judge

FJR/jka

November 2, 1972

Board of Commissioners
Idaho State Bar
P. O. Bar 835
425 First Security Building
Boise, Idaho 83702

Re: PROCEEDING DKT. NO. 71-31

Gentlemen:

The undersigned complainant filed a complaint with your Board on September 2, 1971. The order dated October 26, 1972 contains the following:

> "this Board does find and conclude that no grounds for disciplinary action appear herein and there is no reasonable cause to believe that the Rules of the Supreme Court and the Board of Commissioners of the Idaho State Bar or that the Code of Professional Responsibility of the Idaho State Bar have been transgressed by Respondent or that there is substantial proof or other indicator of such violation thereof."

The above findings are not substantiated in any manner and constitute capricious action and a denial of due process to the complainant.

In a letter dated October 21, 1972 (copy enclosed) your President, Mr. Sharp, advised the complainant that "we are closing our file." In a letter of reply dated October 26, 1972, complainant acquiesced in the proposed action for the reasons stated in that letter.

Mr. Boller undertook no investigation of the facts set forth in the complaint but, in the absence of being able to schedule a meeting with Mr. Walker agreed to accept a letter of explanation from Mr. Walker which was sent dated October 3, 1972 with a copy to the complainant.

When the copy was received I took cognizance of it by also writing a letter dated October 6, 1972 to Mr. Boller (copy enclosed). With the letter of October 6, was enclosed a copy of a letter to Mr. Walker dated September 13, 1971 (copy enclosed) which had been typed in Mr. V. K. Jeppesen's (now Magistrate in Blaine County) office and shown to and concurred in by Mr. Jeppesen prior to its being sent.

Mr. Boller did not seek a statement from Mr. Jeppesen nor show Mr. Jeppesen a copy of the letter which, when confirmed by Mr. Jeppesen would have been conclusive as to Mr. Walker's misconduct and mis-representation, continuing through June 9, 1971, the date of Mr. Walker's meeting with Mr. Jeppesen in Mr. Jeppesen's office.

Instead Mr. Boller saw fit to terminate the inquiry on the procedural grounds set forth in his letter to the Executive Secretary of the Board dated October 13, 1972 which stated:

> "The appeal has been heard by the Idaho Supreme Court, and any further actions I think here would be moot."

The foregoing record of action by Mr. Boller contemplated simply "closing" the file as mentioned by Mr. Sharp in his letter dated October 21, 1972.

Based on the foregoing it is requested that the order dated October 26, 1972 be rescinded and a replacement order entered closing the file until the decision of the Supreme Court of Idaho has been rendered in Van Houten v. Burt, Case No. 11046.

Failure of the Board to so act will constitute a denial of due process and improper Board action subject to being set aside in the courts. Further the unwarranted action taken can be construed as spiteful in view of the pending of Burt v. McQuade in the Federal District Court in Boise. The action of the Board has not conformed to the requirements of its own rules.

Respectfully submitted,

/s/ William R. Burt
William R. Burt
Complainant

ccs: Eugene C. Thomas, President
John M. Sharp, President-Elect
John Bengston, Commissioner
Stephen W. Boller, Esq.

BOARD OF COMMISSIONERS
OF THE
IDAHO STATE BAR

November 10, 1972

Mr. William R. Burt
Deer Creek Ranch
Hailey, Idaho 83333

Dear Mr. Burt:

Thank you for your letter of November 8, 1972.

Because we are active parties in pending litigation, I feel it improper for me to write you further with reference to your complaint against Mr. Lloyd Walker.

The order of the Bar Commission dated October 26, 1972 is in accordance with the decision of the Bar Commission. As I told you subsequently, we will again consider your complaint after all pending litigation has been terminated.

Very truly yours,
IDAHO STATE BAR

/s/ John M. Sharp
John M. Sharp

JMS:cjn
CC: Mr. Ronald Kull
Mr. Edward Benoit
Mr. John Bengtson
Mr. Thomas Nelson
Mr. Eugene Thomas

October 16, 1972

Mr. William Hildebrand
Martindale-Hubbell, Inc.
One Prospect Street
Summit, New Jersey 07901

Dear Mr. Hildebrand:

One of our unsuccessful applicants for the Idaho Bar examination, William R. Burt, lists in his petition for review the fact that he is rated an "a.v." lawyer in the Martindale-Hubbell Law Directory, residence New York City. He states that he has been so listed for a period of twelve years.

The President of the Idaho State Bar, John M. Sharp, wishes me to bring this to your attention and also to bring to your attention the fact that in this same petition he states that he has been a resident of Hailey, Idaho since 1965.

While we do not want to tell you your business, it appears rather strange that an "a.v." rating can be granted in New York City to a lawyer who by his own statement is a permanent resident of a ranch in Hailey, Idaho.

Sincerely yours,

RONALD L. KULL

RLK/gml

cc: Board of Commissioners

STATE OF PENNSYLVANIA)
) ss.
COUNTY OF PHILADELPHIA)

RICHARD LA FARGE, being first duly sworn, deposes and says:

That in the fall of 1972 I was employed with the United States Department of Justice, Anti-Trust Division. That as part of my official duties I traveled to Boise, Idaho as part of an investigation relating to the Idaho State Bar.

That while in Boise, Idaho I talked with Dick Kading, Michael Greene and Dale Higer at the Eberle and Berlin law offices.

That I was advised by the above-named individuals that Tony Park was the Attorney General of the State of Idaho and was representing the Idaho Supreme Court Justices in a suit filed by Mr. Higer and Mr. Greene concerning a recent Idaho Bar Examination.

That I was further advised by these same individuals that Tony Park had discussed with some or all of them the

wisdom of filing this suit.

That I was further advised that Dale Higer or Michael Green had been advised by Attorney General Park or someone on his staff that filing the suit in question was a bad move, that the Supreme Court Justices resented the suit, and that it would be in his best interest and that of the law firm to drop the suit.

That as a result of this conversation my overall impression was that, to varying degrees, Kading, Higer and Green, surmised, apprehended, or believed that Attorney General Park was speaking on behalf of a member or members of the Supreme Court and was by implication or innuendo conveying a message that it would be in the law firm's best interest to drop the suit then pending against the Supreme Court.

That Dick Kading, whose full name I believe is Richard B. Kading, advised me in substance that he did not consider the

message a realistic threat to the law firm and that even if he did he would not bow to it.

That my overall impression was that Dale Higer and Michael Greene were very upset, and concerned about the Supreme Court's attitude towards the suit in question and the repercussions that could result to the law firm because of the suit they had filed.

That as a result of the above-described interview I prepared a memorandum which to the best of my knowledge, is contained in the files of the Department of Justice, Anti-Trust Division.

The above statements reflect my present best recollection of the events described.

/s/ Richard E. La Farge
RICHARD LA FARGE

SUBSCRIBED and SWORN to before me
this 4th day of March, 1975.
/s/ Katherine M. Skinner
Notary Public
NOTARY PUBLIC
Philadelphia County
My Commission Expires May 30, 1977

UNITED STATES DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
Washington, D.C.

TO: The Idaho State Bar) Civil
P.O. Box 833) Investigative
Boise, Idaho 83701) Demand No. 1538

This civil investigative Demand is issued pursuant to the provisions of the Antitrust Civil Process Act. 75 Stat. 548-552. Title 15 United States Code Secs. 1311-13__, in the course of an inquiry for the purpose of ascertaining whether there is or has been a violation of the provisions of Title 15 United States Code Sec._____ by the conduct of the following nature: Agreeing upon the minimum amounts that lawyers practicing in Idaho should charge for legal services and agreeing to exclude qualified applicants from the practice of law for economic reasons.

You are a person under investigation and are hereby required to produce, to make available for inspection and copying or reproduction, and to deliver to a custodian

named herein, at your principal place of business designated above, the documentary material in your possession, custody or control described on the attached schedule, on the 7th day of May, 1973 at 10:00 A.M.

For the purposes of this investigation, the following are designated as custodians or deputy custodians to whom said documentary material shall be made available and delivered: Lewis Barnstein, Attorney (Custodian), Edward R. Kenney and Richard E. LaFarge, Attorneys (Deputy Custodians), U.S. Department of Justice, Washington, D.C. 10330.

Inquiries concerning compliance should be directed to Richard R. Kenney, Attorney (202-739-3081), or Richard E. LaFarge, Attorney (202-739-2438), U.S. Department of Justice, Washington, D.C. 20530.

Your attention is directed to the provisions of Title 18 United States Code Sec. 16-6 as amended which makes obstruction

of this investigation a criminal offense and which is printed in full on the reverse side hereof.

Issued at Washington, D.C. this 4th day of April, 1973.

/s/ Thomas E. Kauper
Assistant Attorney General

BOISE STATE UNIVERSITY . 1910 COLLEGE BLVD.
BOISE, IDAHO 83725
SCHOOL OF EDUCATION

January 30, 1976

In the scientific assessment of human abilities and achievement, a distinction is made between "speed" and "power" tests. In a pure speed test, items are exceedingly simple so that each item attempted can be performed correctly (e.g. placing pegs in holes). The key to success is to attempt to complete as many items as possible within a specified time limit. In contrast, pure power test items are difficult and challenging, the individual's score being dependent on knowledge, understanding and analytic ability rather than speed of performance. On pure power tests, sufficient time is given for all items to be completed.

In practice, tests of abilities and achievement tend to combine elements of speed and power, with one of the components having greater relative strength. It is my

considered opinion that assessments used for the screening and/or certification of professionals should emphasize power and eliminate the speed factor. The basic reason is that power tests are more valid than measures requiring speed (Cronbach, 1960). That is, they predict relevant criteria (e.g. success in one's profession) better than speed tests. Moreover, speed measures tend to be biased against older individuals, particularly those beyond the age of 50 years. Whereas verbal-abstract abilities tend to increase up to and including the sixth decade of life (especially in those who remain intellectually active), performance requiring psychomotor skill (e.g. eye-hand coordination) decline appreciably over time (Bayley and Oden, 1955; Owens, 1966; Bayley, 1970). It can also be posited that the older person with declining psychomotor ability and without the advantage of periodic test-taking

experiences, may suffer from the effects of test-related anxiety. This negative emotional state is known to attentuate performance on speed-dominated instruments. (Matarazzo, 1972).

In sum, tests in which speed is an important factor may unfairly promote the ascendency of younger subjects having better psychomotor and test-taking skills but without necessarily possessing the knowledge of competence of their older counterparts. Thus, in assessing the achievement and professional expertise of groups in which age disparities are present, it is strongly recommended that tests emphasizing power rather than speed be employed.

Steven D. Thurber, Ph.D.

/s/ Steven D. Thurber
Associate Professor
Department of Psychology

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IN THE SUPREME COURT OF THE STATE OF IDAHO

In the Matter of the Petition of:	) REPORT OF SPECIAL MASTERS
	) CASE NUMBERS: 11174,
TWENTY-FIVE APPLICANTS OF THE FALL 1972 IDAHO BAR EXAMINATION	) 11178, 11180, 11181,
	) 11183-89, 11193,
	) 11194, 11196-99,
	) 11200, 11202-07,
	) 11209
	)

REPORT, FINDINGS, CONCLUSIONS AND RECOMMENDATION OF SPECIAL MASTERS

The undersigned Special Masters, appointed by order of the Court dated January 22, 1973, hereby submit their report, findings, conclusions and recommendation concerning the two questions reserved by the Court for its consideration and determination; to wit:

"1. Whether the Board of Commissioners of the Idaho State Bar acted in an arbitrary, capricious or malicious manner in preparing and administering the Fall 1972 Bar Examination so that it was not reasonably designed to test and determine the

professional competence of applicant for admission to the practice of law in the State of Idaho; or

2. Whether the Board of Commissioners of the Idaho State Bar or its Bar Examiners acted in an arbitrary, capricious or malicious manner in grading the Fall 1972 Bar Examination."

In pursuance of our assignment, the Special Masters have reviewed and analyzed the questions which comprise the Fall 1972 Bar Examination, the so-called "model answers" associated therewith, the Rules of the Supreme Court and the Board of Commissioners of the Idaho State Bar Governing Admissions to Practice Law, the Idaho bar examination grading standards and procedures, the grades assigned to each answer of each applicant on the examination, various statistical analyses of these grades, and a substantial number of the

examination papers on a sampling basis; and have interviewed a number of graders with regard to the grading methods and standards which were used.

The Special Masters have found that the examination itself was subject to a number of faults, which caused serious difficulties in the grading process and resulted in a greater percentage of failing grades than should ordinarily be expected in an examination given for the purpose indicated, to a field of candidates limited to graduates of the American Bar Association-approved law schools. We have found no indication whatever that the graders themselves had any motive other than to grade the answers assigned to them fairly and objectively and in accordance with proper standards, or that they did not try to do so to the best of their ability under the circumstances of the quality of examination questions and of the model answers, and their lack of opportunity

to analyze the examination as a whole. We do conclude, however, that all of these circumstances in combination produced some results at variance with the objective of fairly testing and grading the professional competence of candidates at the point where they should be admitted to practice.

Having reached this conclusion, we were confronted with the problem of suggesting an appropriate remedial procedure. To throw out the entire examination would obviously serve no good purpose and would do injustice to those candidates already graded as having passed. Alternative possibilities, considered only with respect to candidates or to specific answers heretofore graded below the passing mark, included: (1) dropping out the results as to certain questions and using the candidates' average scores on the remainder of the examination; (2) regrading (either by the Special Masters themselves or by other graders) of either

(a) selected questions the answers to which had resulted in particularly low grades, or (b) the entire examination papers of all candidates who had received aggregate grades within a selected ranger under the passing grade; (3) uniformly raising all scores by a specified number of points; (4) raising the below-70 scores on all or certain questions by some geometrical formula calculated to correct distortions found in the grading process. We have concluded that the last of these alternatives is the most practical and appropriate remedial procedure and produces results most nearly in line with the objective of a proper evaluation of adequate professional competence for admission to practice. We recommend this remedy to the Court.

FINDINGS

1. The Fall 1972 Idaho Bar Examination exhibits certain faults which have resulted in unduly low grades

particularly in the 0-70 score range. Such faults included:

a. Ambiguities in the questions which tend to mislead the examinees, to waste precious time allotted for answering, and to cause a divergence of answers from the ideal, leading to an unduly low grade despite reasonable efforts to cope with the difficulty.

b. Frequent use of "What would you advise?" as the call of the question. An appropriate answer to such a question, giving due regard to the practicalities, would entail divergence from the scope of the issues intended to be discussed in answer to the question.

c. A number of the questions were too long, and involved too many issues for adequate answering within the 36-minute average time allotted for each question. This leads to missed

issues or superficial treatment or both, inviting a low grade.

d. The questions were very uneven in length and scope, creating serious problems for the examinee in tailoring his own time allotments and the length of his answers. The normal tendency would be to stretch out answers which could be short, and skimp on answers which should be long, redounding in either case to the detriment of the examinee's grade.

e. Some of the questions called for answers to very narrow and highly specialized points of law, frequently not calling for legal reasoning. The grading penalty for not knowing the exact answer to such narrow and highly specialized points is out of proportion to the weight of the question as a test of the examinee's capability for admission to practice.

f. Some of the questions involved peculiarities of Idaho law, thus severely handicapping candidates who did not happen to know those specific points. Understandably, testing for admission to practice in Idaho involves, and should involve, a certain amount of knowledge and recognition of at least broad areas in which Idaho law may differ from the jurisprudence of other states. This has been carried to the point of requiring specific knowledge of details which even a seasoned practitioner would not have at his fingertips.

g. The examination as a whole was unnecessarily broad in scope in that the number of subjects included goes beyond (1) the degree of proficiency necessary to a license to commence the practice of law, and (2) the range of courses generally included

within the students' experience; but the examination required answering all questions without option.

h. Candidates are given no advance notice of the subjects upon which they may be tested. This fact casts upon the candidates a heavy burden of attempting to prepare themselves in practically the entire spectrum of the law, with resultant detriment to their performance during the examination.

2. The so-called "model answers," did not provide a standard by which the graders could measure the answers on the examination. In most cases they were far from what a candidate (either average or extra-well-qualified) might be expected to write in answer to the related question within the 36-minute average time allotment.

3. Reading by the Special Masters of a number of answers to various questions

strongly suggests that there had been considerable use of a mechanistic procedure of assigning certain point values (totally 100 in the aggregate) to individual parts of the question, assigning points to the answer to each part within the range of the assigned value, and adding up the results for use as the final grade assigned to that answer. In view of the wide arithmetical below-passing range of 0 to 70, and the relatively small range of 70 to 100 in going from mere passing to perfection, this method strongly tends to penalize the relatively poorer answer far more than can readily be offset by even exceptionally good answers to other questions. Further, such method tends to lose sight of the overall objective of ascertaining the degree of proficiency necessary to permit the candidate to enter the practice. Interviews with graders disclose that such a grading method was actually used. Despite probable efforts on

the part of the graders who used such a method to alleviate its harshness in application, the Special Masters believe that it accounts in significant part for the low grades assigned to many of the answers to certain questions.

4. There was no caprice or malice on the part of either the Board of Commissioners or its Bar Examiners in respect of either the preparation or administration of the Fall 1972 Bar Examination or in the grading thereof.

5. In certain instances, due to faults in the examination itself and in particular questions included within it, plus the lack of development of appropriate grading standards and procedures, the inadequacy of grading instructions and the use of grading scales which operated with undue harshness in the under-70 range, the grades assigned within the 0-to-70 range were unduly and arbitrarily low.

6. In result, the assigned grades in the 0-to-70 range were characteristically below an appropriate evaluation of the candidate's proficiency and potentiality as a lawyer, and his readiness to be admitted to the practice of law.

7. The distortion of the below-70 grades can reasonably be corrected by the application of a formula which raises such grades by progressively larger amounts as the zero grade is approached, leaving the 70-and-above grades as they were in recognition of the fact that the grade distortion in that range is not significant.

8. The formula which the Special Masters find most practical and appropriate for this purpose is to add to the below-70 grades a factor equal to one-third the difference between the assigned grade and 85, (the midpoint of the passing-score range).

9. It is not necessary to adjust the

scores of candidates previously graded as passing. It is observed however, that the adjusted scores of the heretofore failed candidates in accordance with the foregoing formula do not afford a valid comparison with the grades of the heretofore passed candidates.

CONCLUSIONS

1. A remedial procedure should be applied to the results of the Fall 1972 Bar Examination.

2. Such remedial procedure should be applied indiscriminately to all failed candidates, regardless of whether or not they stand as petitioners before the Court.

3. The remedial procedure which in the opinion of the Special Masters best befits the bar examination objective is that which is set forth in Finding No. 8.

RECOMMENDATION

The Special Masters recommend that the Court adopt and apply the remedial procedure

set forth in Finding No. 8 and Conclusion No. 3, indiscriminately to all failed candidates regardless of whether or not they stand as petitioners before the Court.

DATED: February 28, 1973.

Respectfully submitted,

/s/ John A. Carver, Jr.
John A. Carver, Jr.

/s/ Larry K. Harvey
Larry K. Harvey

/s/ Francis N. Marshall
Francis N. Marshall

Special Masters

MINIMUM FEE SCHEDULES
[¶50,131]

CCH Trade Regulations ¶50,131 at p. 55,215 (Warning of Department of Justice of Minimum Fee Schedules)

Deputy Assistant Attorney General Bruce B. Wilson discussed the practice of imposing minimum fee schedules for lawyers' services before the Pennsylvania Bar Association Conference of County Bar Officers. His thesis is that all practice is fraught with antitrust dangers and should be abandoned or at least radically changed if it is to remain outside the forbidden zone, and that neither interstate commerce nor a learned profession exemption would bar application of the antitrust laws. See ¶620.

[Text of Discussion]

[Introductory remarks omitted]

Attorneys' fee schedules have much in common with the program of the trade association. In the process of developing the schedules, bar associations appoint committees to study

lawyers' fees for various kinds of services. Some, I am told, even conduct a vote on what the minimum fees should be. The results of the study are circulated to the members of the association in the form of minimum suggested fees. Many of these schedules seem to go beyond the mere fact of suggestion. They appear to threaten the lawyer who undercuts the schedule with disciplinary action for unethical conduct and solicitation.

My thesis is that this practice is fraught with antitrust dangers and should be abandoned or at least radically changed if it is to remain outside the forbidden zone. Let me tell you why I think this is so.

Initially, it seems clear that minimum fee schedules of the type I have describe raise the cost of legal services to the consuming public and deprive the individual lawyer of his unfettered right to determine what he shall charge for his services. And

I do not think the courts will readily accept the view that the fee schedule is merely a "suggestion" when the lawyer who disregards the mere "suggestion" runs the risk of crippling sanctions. On their face, then, such schedules appear to limit individual competitive freedom in a manner inconsistent with the goals of the Sherman Act.

To be sure, the Sherman Act requires a showing that a particular arrangement constitutes a restraint on interstate commerce. The scope of the commerce clause has expanded over the years, not only in the antitrust field, but in many areas, such as labor law and the civil rights field. The window washer, the elevator operator, and the owner of a roadside restaurant have all be held to be within its reach.

The legal profession makes extensive use of interstate facilities in the ordinary course of business, and the advice of the

lawyer affects the interstate movement of many million of dollars in goods and services. So I think that for the legal profession to claim that its activities do not constitute interstate commerce would be to place reliance on a slender reed indeed.

Another supposed haven is the view that the learned professions--which I will assume on the basis of personal bias includes lawyers--enjoy some special professional exemption from the antitrust laws. Those of you who are aware that this exemption has not protected various activities of medical associations, pathologists and real estate brokers against antitrust attack might well conclude that no such exemption exists. I am not now speaking of the more general programs of bar associations with respect to ethics and qualifications. I am limiting myself specifically to the question of fees for services. In that area, one might wonder why lawyers feel they need minimum

fee schedules where doctors, for example, do not. I think those who expect that bar associations can successfully invoke the so-called professional exemption are running a great risk.

There are signs that many bar associations are fully aware of the problems in this area and of the serious antitrust risks involved in minimum fee schedules. But I sense a curious reluctance on the part of the organized bar to bite the bullet, and remove every trace of pressure and coercion from minimum fee schedules.

The notion that the lawyer who charges lower fees than his brother must of necessity be rendering inferior service is a curious one. It seems to me that the interest of the organized bar in attempting to maintain professional standards must focus upon a lawyer's actual performance and not on his fees. Otherwise, we deprive the public of the benefits of lower prices from

the lawyer whose experience, qualities of mind, and financial aspirations enable him to furnish fully satisfactory services at fees below those suggested in the schedule. In other areas of commerce, after all, lower prices may be a result of efficiency. I should think the same holds true for lawyers. Just as the antitrust laws seek to insure the businessman the right freely to determine his prices, we should guarantee the same freedom to lawyers to determine their fees.

One final point. In these times when the integrity of the rule of law--and indeed, of the role of lawyers--is questioned in so many quarters, it is more important than ever before that the organized bar be held in the highest esteem by the public it exists to serve. I doubt that it fosters this cause if lawyers plead for special immunities,or admit to their clients that their fees are not a product of

their own free individual decisions. I hope that our discussion does not lose sight of this broader concern--one I am certain we all share.

ADVISORY FEE SCHEDULE
of the
IDAHO STATE BAR
(July 1971 Revision)

GENERALLY

In cases of financial hardship where justice requires representation by counsel, a lawyer is at liberty to deviate from or ignore the following recommendations.

It is unethical for an attorney to represent a client for an unreasonable fee. In cases of unreasonable low fees, amongst other things, an attorney is guilty of unethical solicitation of practice.

The basic consideration in setting a fee should be a fair evaluation of the services rendered and the skill and efficiency of the lawyer in the representation of his clients.

TIME RATES

Normally an attorney should, regardless of other considerations, fix a fee at least consistent with the following recommended

hourly rates:

0 to 2 years
practice---------$15.00 to $25.00 per hour

2 to 5 years
practice--------- 20.00 to 30.00 per hour

5 to 10 years
practice--------- 30.00 to 50.00 per hour

10 years practice
and over--------- 35.00 to 75.00 per hour

Higher hourly rates should be set in consider-ation of particular experience, unusual skill or practice with specialties.

Where representation requires absence from office for entire day, a per diem to six to eight times one's hourly rate is advised or total hours time the appropriate rate, whichever is the greater

Where service is required during night hours, week ends or holidays, attorneys are advised that hourly rates should be adjusted to 150% to 200% of the normal rate, consistent with circumstances surrounding such service.

EXPENSES

Costs and expenses actually and reasonably incurred in rendering legal service should always be charged over and above the fee charge. They should normally be obtained in advance as retainer.

RETAINERS

Clients represented on a retainer should be charged a reasonable fee generally consistent with the rates represented by this schedule, though it is recognized that this will be a matter of general evaluation by the individual attorney. It remains unethical, whether representing a client on a fee or retainer basis, to charge unreasonably low fees for services rendered.

SPECIFIC FEES AND MATTERS

Introduction

THE FOLLOWING SCHEDULE IS ADVISED SUBJECT TO THE CONDITION THAT WHERE AN ATTORNEYS CHARGE ON A TIME BASIS WOULD EXCEED THE RECOMMENDED FIGURE, THE HIGHER FEE SHOULD BE CHARGED.

The figures hereinafter set forth contemplate only the customary or ordinary activities and where extraordinary requirements are encountered, additional fees should be charged.

I. U.S. COURT OF APPEALS

Appearance, brief and oral argument	$2,000.00

II. STATE SUPREME COURT

Appellant: Taking Appeal Briefs and argument	1,300.00
Respondent: Appearance, Brief and argument	1,000.00
Petition for rehearing	250.00
Petition for rehearing and arguments	350.00
Original proceedings	1,000.00

III. STATE AND FEDERAL DISTRICT COURT

A. Drafting pleadings	
Drafting complaint	150.00
Drafting defense appearance	100.00

B. Motion practice

Drafting ordinary motions-	100.00
Drafting motion for summary judgment and supporting documents----------	200.00
Drafting motion for new trial, amended findings and conclusions, or judgment notwithstanding the verdict----------	150.00
Court attendance-contested- on any motion, exclusive of drafting and research-	100.00
Court attendance-uncontested- on any motion, exclusive of drafting and research--	75.00

C. Change of venue

Drafting motion on defendant's residence----	100.00
Drafting motion on convenience of witness------	150.00

D. Discovery practice

Oral Depositions (exclusive of preparation, notices, etc.)-attendance and participation----------	100.00
Written interrogatories-- drafting questions or answers----------	50.00

E. Pre-trial conference

Drafting required memoranda, if any, with Court appearance and participation in conference (exclusive of general preparation to be billed at no less than time charge) minimum----------	200.00

F. Third party practice

Same as original proceedings

G. Trial

For day or part thereof-- Court or jury----------	250.00

H. Dissolution of partnership or corporation---------- 225.00

I. Divorce

Default without custody or property provisions------	225.00
Default with custody and/or property provisions------	300.00
Defense--without appearance-negotiating settlement-----	225.00
Contested case--either party--per diem and time charge and not less than--	500.00
Modification of decree, not involving custody----	225.00
Modification of decree, involving custody--------	350.00

NOTE: Because terms of payment may be as significant as amounts, at least 50% of the recommended minimum should be required and received at the commencement of representation and the entire balance required and received prior to adjudication.

J. Foreclosures

Chattel mortgage and Mechanics lien: (default)

first----$	1,000	or part-20%)	or
next-----	1,000	or part-15%)	$150.00
next-----	1,000	or part-10%)	which-
all over--	3,000	- 5%)	ever is greater

Real estate mortgage (default)

first---	$10,000 or part-	10%)	or
second--	10,000 or part-	7%)	$250.00
third---	10,000 or part-	5%)	which-
all above---	30,000	- 3%)	ever is greater

(Deficiencies shall be collected as retail collection accounts and as an additional matter.)

Trust deed, foreclosure by action:

first---	$10,000 or part-	10%)	or
second--	10,000 or part-	7%)	$250.00
third---	10,000 or part-	5%)	which-
all above---	30,000	- 3%)	ever is greater

Conditional sales contract (same as contingent fee--damage cases)

Claim and delivery, minimum retainer----------$ 250.00

K. Condemnation

50% of net recovery over amount offered by condemning authority

IV. JUSTICE'S AND PROBATE COURT PRACTICE

Appearance----------	$ 75.00
Trial, per diem----------	250.00
Preliminary hearing, per day	200.00
Drunken and reckless driving and non-traffic misdemeanor cases, with or without jury, per day----------	250.00
Insanity proceeding (except by court appointment)------	250.00
Youth Rehabilitation Act, appearance and hearing, per diem of----------	150.00
Appeal, perfecting (civil or criminal)----------	75.00

COURT MATTERS

A. Adoption: Related-------- 125.00
Non-related---- 175.00

B. Termination of Parent-Child Relationship------- 175.00

C. Guardianship---------- 175.00
Annual account---------- 60.00
Minor's compromise settlement---------- 150.00

D. Decedent's Estates
(1) Probate
To be based on all separate property, all the community property up to $10,000, and one-half the remaining community property--
first-------$1,000 -7%
next-------- 4,000 -5%
next-------- 5,000 -4%
over------- 10,000 -3%

The probate of any estate shall be subject to at least $300.00 attorney's fee.

Additional charges shall be made for extra ordinary services or when estates must be probated over an extended period of time. Also, since settlement of decedents' affairs may entail many functions in addition to probate of estates, i.e., tax determination of trusts, life insurance, settlement options, and other such matters, additional charges should be made for these services.

(2) Short form procedures: Determination of heirship after two years, and community property upon wife dying intestate 1/4 regular fee or $300.00, whichever is greater.

(3) Inheritance tax determination---------- $ 300.00

(4) In an appropriate case a fee may be prepared on the basis of the actual time devoted to such case rather than figure on the above percentage and the lesser of the two figures may be charged.

V. ADMINISTRATIVE PRACTICE

Federal and State--Conference or hearing-per diem-------	$ 250.00
County or City--Conference or hearing-per diem-------	200.00

VI. BANKRUPTCY

A. Voluntary

1. Uncontested, no assets and not in business---	300.00
2. Uncontested, in business or with assets----------	500.00
3. If wife included, add 50% or regular charge	

B. Involuntary

1. Petition and first meeting of creditors--	350.00
2. Additional, on per diem or hourly basis	

C. Petition for Reorganization

1. Petition for first meeting----------	400.00
2. Additional, on per diem or hourly basis	

3. Litigation on District Court basis

D. Preparing, Filing and Presenting Creditor's Claim- 35.00

E. Preparing, Filing and Presenting Objection to Discharge---------- 225.00

F. Defending Objection to Discharge---------- 175.00

G. Wage Earners, Special Proceedings---------- 350.00

VII. COLLECTIONS--CONTINGENT FEES

First $5,000--without litigation------- 25% to 33-1/3%

First $5,000-with litigation------- 33-1/3 to 50%

Fees on collection in excess of $5,000 subject to arrangement between counsel and client

VIII. DAMAGE ACTIONS--CONTINGENT FEES--CLAIMANT'S COUNSEL

Settled without action being filed---------- 25%

Settled after action, but more than one week before trial-- 30%

Settled after action, but within one week of, during or after trial----------33-1/3%

Settled upon appear or following post-verdict proceedings-- 40%

IX. WORKMEN'S COMPENSATION PROCEEDINGS--CONTINGENT FEES

No offer-settlement prior to day of hearing---------- 25%

No offer-settled on day of, during or following hearing, or by Board ruling-------35% to 40%
Offer made-settled prior to day of hearing------- 33-1/3% of recovery in excess of offer
Offer made-if settled on day of, during or following hearing, or by Board ruling---------- 50% of recovery in excess of offer or 25% of entire award, whichever is less
Note: Contingent fees charged should take into account all payments enforced against employer including payments of compensation and of hospital, medical and related expenses.

X. OFFICE PRACTICE

A. Corporations--No Public Offering Involved:

Organizing, through first meeting of stockholders and directors--existing business---------- $400.00
Organizing, through first meeting of stockholders and directors--new business---------- 350.00
(Note: add $5.00 to the organization fee for each $1,000 of capital or assets to be employed in excess of $5,000)
Dissolution---------- 275.00
Amendment of Articles---- 200.00
Merger--closely held--common ownership-------- 750.00
Annual meetings and minutes---------- 75.00
Qualifying to do business in another state-------- 75.00

NOTE: Incidental agreements amongst shareholders, officers and/or directors are additional matters for which supplemental fees are in order.

B. Drafting Instruments (exclusive of consultation time)

(1)	Deed--simple---------	$ 25.00
(2)	Bill of sale---------	25.00
(3)	Assignment of contract and deed----------	50.00
(4)	Lease---------- (plus 1-1/2% of total rent over $6,000.00)	65.00
(5)	Trust deed, including note----------	35.00
(6)	Power of Attorney Special----------	40.00
	General----------	25.00
(7)	Lien, preparation and filing----------	40.00
(8)	Mortgage and note----	35.00

(9) Contact of Sale--Realty or otherwise, $75.00 or 1/2 of 1% of the purchase price, whichever is greater, or, if representing party but not drafting papers, $25.00 or 1/4 of 1% of the total purchase price, whichever is greater; and if no licensed real estate broker participates in transaction, then $50.00 or 1% of purchase price, whichever is greater, or, if representing party but not drafting papers, then $25.00 or 1/2 of 1% of purchase price, whichever is higher. If transaction involves in excess of $100,000, the fee in excess amount should be subject to negotiation consistent with responsibility, time

and skill required of counsel.

(10) Bulk sale compliance-- $ 65.00

(11) Will: Simple---------- 35.00
(Additional charge if trust, life estate, remainder, tax planning or other additional matters involved)

(12) Partnership Agreement
(a) General partnership-simple---------- 150.00
(b) Limited partnership simple---------- 275.00

Note: add to the above fees the sum of $5.00 for each $1,000 of assets involved in excess of $5,000.00. If a buy or sell agreement is included, or if special tax or other problems are involved, the fee should be increased.

C. Consultation--incidental or brief
(1) Telephone---------- $ 10.00
(2) Office--under 20 min.- 15.00
(3) Home--under 20 min.--- 25.00

D. Trust Deed--foreclosure--
by Notice and Sale (without litigation), 1/2 to 3/4 of fee for probate of decedent's estate in amount of balance due, or $200.00, whichever is greater.
NOTE: Retainer arrangements leading to lesser net fees for such services are improper.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WILLIAM R. BURT, ERNESTO G. SANCHEZ and JOHN HURST, Individually and on behalf of all others similarly situated, Plaintiffs, vs. THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF IDAHO; HENRY F. McQUADE, Chief Justice, J. McFADDEN, CHARLES R. DONALDSON, ALLAN G. SHEPARD and ROBERT E. BAKES, in their official capacities; THE IDAHO STATE BAR, a professional association; JOHN M. SHARP, JOHN H. BENGSTON, THOMAS G.NELSON and RONALD L. KULL, Commissioners and Officers of the Idaho State Bar Association, Individually and in their official capacities, Defendants.	Civil No. 1-72-147 STIPULATION AND NOTICE OF DISMISSAL PURSUANT TO RULE 41, FEDERAL RULES OF CIVIL JOSEPH PROCEDURE

COME NOW plaintiffs, pursuant to Rule 41 F.R.C.P. and as respects the above-entitled defendants, the Honorable Justices of the Supreme Court of the State of Idaho, Henry F. McQuade, Chief Justice, Joseph J. McFadden, Charles R. Donaldson, Allan G. Shepard and Robert E. Bakes in their official capacities, do dismiss this cause, this instrument being intended to constitute a notice of dismissal under and pursuant to Rule 41(a)(1)(i) F.R.C.P.; and further,

Said plaintiffs do herewith and by these presents stipulate by and through undersigned counsel with defendants the Idaho State Bar, John M. Sharp, John H. Bengston, Thomas G. Nelson and Ronald L. Kull, Commissioners and Officers of the Idaho State Bar, individually and in their official capacities, acting herein by and through their undersigned counsel of record in this cause, that said cause shall be and by this Stipulation is dismissed, likewise

pursuant to Rule 41 F.R.C.P.; and further,

Said stipulating parties do herewith represent that this voluntary dismissal is agreed to by reason of plaintiffs' present belief that the good faith examination and study of pertinent practices together with the Rules of the Board of Commissioners of the Idaho State Bar and of the Supreme Court of the State of Idaho, respecting matters touched upon in said pleadings, offer a sufficient and satisfactory forum for the study of the issues raised herein.

Dated this 28th day of November, 1972.

EBERLE, BERLIN, KADING,
TURNBOW & GILLESPIE,
CHARTERED

By /s/ R. B. Kading, Jr.
~~Dale G. Higer~~
and

/s/ Michael A. Greene
Michael A. Greene

/s/ Edward L. Benoit
Edward L. Benoit

/s/ Glenn A. Coughlan
Glenn A. Coughlan

/s/ Eugene C. Thomas
Eugene C. Thomas
Attorneys for the Idaho State Bar, and for John M. Sharp, John H. Bengston, Thomas G. Nelson and Ronald L. Kull, Commissioners and Officers of the Idaho State Bar, individually and in their official capacities

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 28th day of November, 1972, I mailed a true and correct copy of the within and foregoing STIPULATION AND NOTICE OF DISMISSAL PURSUANT TO RULE 41, FEDERAL RULES OF CIVIL PROCEDURE

to: W. Anthony Park
Attorney General
State House
Boise, Idaho 83701
Attorneys for The Honorable Justices of the Supreme Court of the State of Idaho; Henry F. McQuade, Chief Justice, Joseph J. McFadden, Charles R. Donaldson, Allan G. Shepard and Robert E. Bakes

EBERLE, BERLIN, DADING, TURNBOW & GILLESPIE, CHARTERED

By /s/ Michael A. Greene
Attorneys for Plaintiffs William R. Burt, Ernesto G. Sanchez and John Hurst

NOTICE OF REJECTION OF APPLICANT

To: William R. Burt — Application and Applicant

of: Hailey, Idaho — No. A-1443

YOU ARE HEREBY NOTIFIED that your application to practice law within the State of Idaho was on the 23rd day of Sept. 1972 denied by the Board for the following reason--Failure to Pass the Idaho State Bar Examination

DATED this 25th day of September, 1972

BY ORDER OF THE COMMISSIONERS OF THE IDAHO STATE BAR

By /s/ Ronald L. Kull Secretary

IN THE SUPREME COURT OF THE STATE OF IDAHO

In the Matter of the Petition of:	)	ORDER FOR PARTIAL DISMISSAL AND APPOINTING SPECIAL MASTERS
WILLIAM R. BURT	)	
	)	CASE NUMBER 11174

The petition of the applicant in the above entitled matter having been filed and presented to the Court for its consideration and review of the decision of the Board of Commissioners of the Idaho State Bar in denying the applicant a passing grade on the bar examination given August 28, 29 and 30, 1972 pursuant to the rules and order of this Court; and the Court having reviewed said petition pursuant to the rules and law of this Court;

NOW, THEREFORE, IT IS HEREBY ORDERED that pursuant to the rules and law of this Court the petition of the applicant herein be, and it is hereby, dismissed as to all allegations of said petition except as to

the issues hereafter reserved by the Court for further consideration and determination; and that this partial dismissal is made on the grounds and for the reasons that the Court has determined as a matter of law that all allegations of the petition herein, except as to allegations on the issues reserved herein, fail to state grounds for review under the rules and law of this Court.

IT IS FURTHER ORDERED, that the Court does hereby expressly reserve its decision and takes under advisement allegations of the petition raising either of the following issues:

1. Whether the Board of Commissioners of the Idaho State Bar acted in an arbitrary, capricious or malicious manner in preparing and administering the Fall 1972 Bar Examination so that it was not reasonably designed to test and determine the professional competence of applicant for

admission to the practice of law in the State of Idaho; or

2. Whether the Board of Commissioners of the Idaho State Bar or its Bar Examiners acted in an arbitrary, capricious or malicious manner in grading the Fall 1972 Bar Examination.

IT IS FURTHER ORDERED, that the following named persons,

Lawrence Harvey, Dean
College of Law
Willamette University
Salem, Oregon

Francis Marshall
Member of the Bar of the State of California, and Chairman of the Bar Examination Committee for the State of California
San Francisco, California

John C. Carver, Professor
College of Law
University of Denver
Denver, Colorado

Lon Davis, Esquire
Member of the Bar of the State of Idaho and Staff Member of the Idaho Supreme Court
Boise, Idaho
(To serve as Secretary and ex-officio nonvoting member of the Committee)

be and they are hereby appointed as Masters of this Court and are hereby charged by this Court with the responsibility to review and investigate the content, administration, and grading of the Fall 1972 Bar Examination and to file with this Court their report together with recommended findings and conclusions upon the two issues reserved above by this Court for further consideration and determination.

IT IS FURTHER ORDERED, that for the purpose of carrying out their duties and responsibilities assigned herein, the above appointed Masters may conduct such hearings and make such investigations as it deems necessary and for such purposes shall have the power to compel the attendance of witnesses and to conduct such discovery proceedings as prescribed by the Idaho Rules of Civil Procedure.

IT IS FURTHER ORDERED, that the appointment of the Masters herein shall continue

until their report and recommended findings and conclusions are received and accepted by this Court, or until further order of this Court.

Dated this 22nd day of January, 1973.

/s/ Charles R. Donaldson
CHIEF JUSTICE, IDAHO
SUPREME COURT

THE SPIRIT
of
'SEVENTY-SIX

THE STORY OF THE AMERICAN REVOLUTION
AS TOLD BY PARTICIPANTS

EDITED BY
HENRY STEEL COMMAGER
and
RICHARD B. MORRIS

VOLUME
I

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CHAPTER ONE

The Fierce Spirit of Resistance

"WE MUST begin somewhere and, notwithstanding John Adams' insistence that the Revolution was in the hearts and minds of men and began with the first plantation in America, we must begin with some decisive act. It is not difficult to find that act: the Boston Tea Party. Earlier issues and conflicts had agitated and even exacerbated relations between the colonies and the mother country--the Stamp Act, the Townshend Acts, the seizure of the sloop Liberty, the Boston Massacre, the burning of the Gaspée--but none of these precipitated an open break. That came over what appeared to be a less serious issue, and one lacking in those constitutional overtones so dear to the American patriots--the Act of Parliament of May 10, 1773, permitting the East India Company to export tea to the colonies with

remission of ordinary British duties and with the assurance of a virtual monopoly on the retail sale. It was a clever plan. The Americans would get their tea cheaper than ever before; the company would be rescued from financial ruin; and the principle of a tax--that 'peppercorn of principle'--would be vindicated. 'It was no purpose making objections, for the King would have it so,' said Lord North.

The East India Company promptly took advantage of the new law by shipping half a million pounds of tea to a picked group of agents in Boston, New York, Philadelphia and Charleston. It was the danger of this monopoly rather than the tax itself--only 3 pence to the pound--that aroused resentment in the colonies. In Charleston the tea was landed but placed in government warehouses and allowed to rot; in Philadelphia, New York and elsewhere the ships were not permitted to land with their offensive

cargoes. Only in Boston did the authorities, egged on by the stubborn Hutchinson, persist in the attempt to land the tea. It was to prevent this that Samuel Adams, Hancock, Warren, Revere and other leaders of the Massachusetts radicals organized the Boston Tea Party.

It was the end of November 1773 when the first ship bearing tea sailed into Boston harbor--the Dartmouth; she was shortly followed by two others. 'The flame is kindled, and like lightning it catches from soul to soul,' wrote Abigail Adams to her husband John. Boston erupted into public meetings and private conferences; 'the town is as furious as it was in the time of the Stamp Act,' said Governor Hutchinson. Two mass meetings resolved that the ships must..." [emphasis added]